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No. 177.

Br. of Taylor, Moores & Hadley for Appellees.

IN THE

Supreme Court of the United States

Filed Oct. 13, 1902.

OCTOBER TERM, 1902.

INDIANA MANUFACTURING COMPANY,
Appellant,
v.
ARMIN C. KOEHNE ET AL.,
Appellees.
} Term No. 177.

BRIEF FOR APPELLEES.

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Supreme Court of the United States

OCTOBER TERM, 1902.

INDIANA MANUFACTURING COMPANY,
Appellant,
v.
ARMIN C. KOEHNE ET. AL.,
Appellees.

No. 177.
In Equity.

APPELLEES' BRIEF.

STATEMENT.

On July 13, 1894, suit was brought in the circuit court of the United States for the district of Indiana, by the appellant herein, against the then taxing officers of Marion county, Indiana, to enjoin the collection of taxes for the years 1892, 1893, 1894, and 1895. The case was tried in the circuit court and a decree was entered perpetually enjoining the collection of the taxes claimed to be due. An appeal was taken to the circuit court of appeals for the Seventh circuit and dismissed by that court for want of jurisdiction.

Holt v. Indiana Manufacturing Co., 80 Fed. 1, 40 U. S. App. 717.

The circuit court of appeals held that the suit was not one arising under the patent laws of the United States, and that as the jurisdiction of the circuit court could rest only on the ground that complainant's constitutional rights were infringed by the laws of the state of Indiana, which were repugnant to and in controvention of the constitution of the United States, an appeal would not lie to that court and could only be taken directly to this court. The case was then appealed to this court.

This court held that "the pecuniary limitation of over $2,000.00 applied, and that the taxes in question did not reach that amount," and therefore the circuit court had no jurisdiction, and reversed and remanded the cause with directions to dismiss the bill.

> Holt v. Indiana Manufacturing Co., 176 U. S. 68.

On June 28, 1900, another bill was filed by the company in the circuit court for the district of Indiana, against Armin C. Koehne, and others, then taxing officers of Marion county, Indiana, and others, constituting the board of review of that county, and some others constituting the state board of tax commissioners of Indiana, to enjoin the collection of certain personal taxes for the years 1893, 1894, 1895, 1896, 1897, 1898, and 1900, assessed against the complainant. The taxes for the years 1893, 1894, and 1895 being the same taxes in controversy on such former appeal. The parties here are the same as the parties to the bill that was dismissed, except certain

new officers and the members of the state board of tax commissioners, who are also made parties defendant.

A demurrer was filed to the bill, and, upon the hearing, the demurrer was sustained and the bill was dismissed for want of equity.

THE PLEADINGS.

The bill, as filed on June 28, 1900, and the supplemental bill, filed January 21, 1901, are found on pp. 1 to 20, inclusive, of the record.

On June 13, 1901, a demurrer was filed, the cause for demurrer being:

1st. That it appears on the face of the bill that the complainant has an adequate remedy at law.

2nd. That the said complainant has not in or by his said bill or amendment, made or stated such a cause as doth or ought to entitle it to any relief as is thereby sought or prayed for from or against this defendant.

3rd. That the value of the subject matter of the appellant's action for the years 1893, 1894, and 1895, each separately, is beneath the dignity of this court, in that it does not show by the said bill or amendment that the matter in dispute for either of said years exceeds, exclusive of interest and costs, the sum of $2,000.00.

4th. Because neither the said bill nor amendment shows on its face any diverse citizenship between the parties complainant and defendant.

5th. Because neither the bill nor the supplemental bill shows that the action is one arising under the constitution or the laws of the United States.

6th. That it appears from said bill and amendment that this court has no jurisdiction to hear and determine this action.

7th. That said bill of complaint and amendment are wholly without equity.

(See record, pp. 21-23.)

On September 25, 1901, the cause having been heard, it was "ordered, adjudged and decreed that the bill of complaint be and the same is hereby dismissed for want of equity at the costs of complainant."

(See record, p. 24.)

That thereupon an appeal was prayed and granted to this court, the errors assigned being:

1st. That the court erred in holding that the complainant had an adequate remedy at law.

2nd. That the court erred in holding that the complainant had a suitable and adequate remedy under the laws of the state of Indiana.

3rd. That the court erred in holding that the bill of complaint herein is without equity.

4th. That the court erred in sustaining the demurrers of defendants.

5th. That the court erred in not overruling the demurrers of the defendants.

6th. That the court erred generally in its decision and decree in this cause and particularly in this in dismissing complainant's bill of complaint.

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POINTS AND AUTHORITIES.

(No. 1.)

The complainant has a plain, adequate, legal remedy under the laws of the state of Indiana and is not entitled to the interposition of a court of equity.

Sec. 1, Article 10, Indiana Constitution;
Secs. 8458, 8463, 8422, 8435, 8491, 8492, 8532, 8543 (Burns R. S. 1894); 8543 Burns R. S. 1901;
Senour v. Matchett, 140 Ind. 636;
Ogden, Treas., v. Walker, 59 Ind. 460;
Adams Express Co. v. Ohio, 165 U. S. 194, 219;
Pittsburg, etc., Ry. v. Board, 172 U. S. 32;
Small, Rec., v. City of Lawrenceburg, 128 Ind. 231;
Clement v. People, 177 Ill. 144;
Kinley Mfg. Co. v. Kochersperger, 174 Ill. 379;
Jones, Treas., v. Gas Co., 135 Ind. 595.

(No. 2.)

If the state board should affirm the assessment made by the county board, the appellant should have paid the taxes assessed and then filed a petition with the board of commissioners for recovery of the amount illegally assessed. The taxes here enjoined are the state, county and city taxes. The statutes of the state of Indiana provide a complete system for the refunding of taxes that have been illegally

assessed and collected, even after they have been distributed to the municipalities for which they were collected.

Secs. 7915, 7916, 1419 to 1425 inc., 3618 Burns R. S. 1901;
Board v. Armstorng, 91 Ind. 528;
Simonson v. Town, 5 Ind. App. 466;
Dillon on Municipal Cor. 941;
Pittsburg, etc., Ry. v. Board, 172 U. S. 32.

(No. 3.)

The bill does not show that appellant is entitled to relief in a court of equity.

(a) That the collection of the taxes assessed would produce irreparable injury.

(b) That the collection of the taxes would lead to a multiplicity of suits.

(c) That the tax would cast a cloud upon the complainant's title to real estate, and unless the bill states facts, bringing the case under one of these recognized heads, no cause for equitable interference is shown and the decree of the court sustaining the demurrer and dismissing the bill was right.

Dows v. City of Chicago, 11 Wall. 108;
Hannewinkle v. Georgetown, 15 Wall. 547;
State R. R. tax cases, 92 U. S. 575;
Milwaukee v. Koefler, 116 U. S. 219;
Shelton v. Platt, 139 U. S. 591;
Pac. Express Co. v. Seibert, 142 U. S. 339;
Pittsburg, etc., Ry. v. Board, 172 U. S. 32;
Cooley on Taxation, p. 543;

Pac. Express Co. v. Seibert, 44 Fed. 310;
Du Bois v. Board, 10 Ind. App. 347;
Secs. 8532, 8547, 8556, 8570, 7917 Burns R. S. 1894;
Schultz v. Board, 20 Ind. 178;
State v. Board, 63 Ind. 497;
Arkansas, etc., Asso. v. Madden, 175 U. S. 269;
Brewer v. City of Springfield, 97 Mass. 152;
Hunnewell v. City of Charleston, 106 Mass. 350;
Van Coot v. Board, 18 Wis. 247;
Cooley on Taxation, p. 538;
Moores v. Smedley, 6 Johns. Ch. (N. Y.) 28;
Wells, Fargo & Co. v. Dayton, 11 Nev. 161;
Sec. 3224 U. S. Rev. Stat.

(No. 4.)

The bill does not show that the value of the letters patent was included in the assessment. It must be presumed, in the absence of allegations of fraud, that the taxing officers performed their duties under the law and assessed only such property as was subject to taxation and excluded all property that was exempt. Taxing officers, under the laws of the state of Indiana, in the assessment of corporations, may assess the capital stock in an amount far in excess of the value of the tangible property.

Secs. 8411, 8435, 8440, 8458, 8459, 8460, 8463, 8491, 8492 Burns R. S. 1901;
Pittsburg, etc., R. R. Co. v. Backus, 133 Ind. 625;

Hyland v. Central Iron & Steel Co., 129 Ind. 68;
Pittsburg, etc., Ry. v. Backus, 154 U. S. 439;
Adams Express Co. v. Ohio, 165 U. S. 194;
Adams Express Co. v. Ohio, 166 U. S. 185.

(No. 5.)

Matters over which the states have control, as shares of bank stock owned by citizens or having its situs within the state, or franchises of corporations granted by the state, inheritances and descents, are proper subjects of taxation by the states, and both the stock of the corporation or the estate may be invested in federal securities.

The states have the power to tax the property and instrumentalities used in interstate commerce having a situs within the state so long as no discrimination is made against such property in favor of like property in the state.

Society for Savings v. Coite, 6 Wall. 594;
Provident Institution v. Mass., 6 Wall. 611;
Hamilton Co. v. Mass., 6 Wall. 632;
Home Insurance Co. v. New York, 134 U. S. 594, 606.

States may impose a tax upon the privilege of taking, under the statute of wills or of descents, although part of the property of the decedent was composed of United States bonds.

Plummer v. Coler, 178 U. S. 115, 135;
Murdock v. Ward, 178 U. S. 139;
Sherman v. United States, 178 U. S. 150;
Orr v. Gilman, 183 U. S. 278, 289.

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States may, under the act of congress, tax the shares of stock of a national bank to the shareholders, although the stock is wholly invested in government bonds.

Van Allen v. Assessors, 3 Wall. 573, 582;
People v. Commissioners, 4 Wall. 244, 255;
Lionberger v. Rouse, 9 Wall. 468, 473;
Palmer v. McMahon, 133 U. S. 660, 665.

A state can not exact a tax or license from a citizen of another state for the privilege or license of carrying on interstate or foreign commerce within its limits, nor impose a tax or duty upon the movements or operations between states that amounts to a regulation of commerce.

Moran v. New Orleans, 112 U. S. 69, 74;
Almy v. California, 24 How. 169;
Woodruff v. Parham, 8 Wall. 123, 138;
Crandall v. Nevada, 6 Wall. 35;
State Freight Tax Case, 15 Wall. 232, 281;
Railroad Co. v. Maryland, 21 Wall. 456, 472;
Welton v. Missouri, 91 U. S. 275;
Guy v. Baltimore, 100 U. S. 434;
Pickard v. Pullman Southern Car Co., 117 U. S. 34, 43;
Robbins v. Shelby Taxing District, 120 U. S. 489, 497;
Leloup v. Mobile, 127 U. S. 640, 648;
Lyng v. Michigan, 135 U. S. 161, 166;
McCall v. California, 136 U. S. 104, 111;
Crutcher v. Kentucky, 141 U. S. 47, 61;
Brennan v. Titusville, 153 U. S. 289, 303.

Ships or vessels engaged in interstate or foreign commerce may be taxed by the state at their legal situs, their home port and the domicil of their owners.

Hays v. Pacific Mail Steamship Co., 17 How. 596, 600;
St. Louis v. Ferry Co., 11 Wall. 423;
Morgan v. Parham, 16 Wall. 471;
Wiggins Ferry Co. v. East St. Louis, 107 U. S. 365, 373;
Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 207.

States may tax personal property employed in interstate or foreign commerce, like other property within its jurisdiction.

Delaware R. R. Tax Case, 18 Wall. 206, 232;
Telegraph Co. v. Texas, 105 U. S. 460, 464;
Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 206;
Western Union Telegraph Co. v. Mass., 125 U. S. 530, 549;
Marye. v. Baltimore, etc., R. R. Co., 127 U. S. 117, 123;
Leloup v. Mobile, 127 U. S. 640, 649;
Pullman's Car Co. v. Pennsylvania, 141 U. S. 18;
State R. R. Tax Cases, 92 U. S. 575, 607;
Columbus Southern Ry. Co. v. Wright, 151 U. S. 470;
Cleveland, etc., Ry. Co. v. Backus, 154 U. S. 439, 445;
Western Union Telegraph Co. v. Taggart, 163 U. S. 1, 14;

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Adams Express Co. v. Ohio, 165 U. S. 194;
Pittsburg, etc., Ry. Co. v. Backus, 154 U. S. 421;
Postal Telegraph, etc., Co. v. Adams, 155 U. S. 688;
Henderson Bridge Co. v. Kentucky, 166 U. S. 150;
Adams Express Co. v. Ohio, 166 U. S. 185;
American Refrigerator Co. v. Hall, 174 U. S. 70, 75;
New York v. Roberts, 171 U. S. 658, 664;
Union Refrigerator Co. v. Lynch, 177 U. S. 149, 152.

(No. 6.)

Letters patent issued by the government of the United States is a franchise, which secures to the patentee the right to exclude every one from making, using or vending the thing patented without permission of the patentee. This is all he obtains by his letters patent and all the rights that the government guarantees to protect him in. The assessment of this franchise, or right for taxes in no way interferes with or detracts from this guarantee of the government. It is a property that may be sold, assigned, transferred by gift, sale, devise or judicial process and under the provisions of the law of Indiana is taxable.

Patterson v. Kentucky, 97 U. S. 501;
Bloomer v. McQuewan, 14 How. 539;
In re Brosnahan, 18 Fed. 62;
Jordan v. Overseers, 4 Ohio 295;
State v. Telephone Co., 36 Ohio St. 296;

Tod v. Wick, 36 Ohio St. 370;
Livingstone v. Van Ingen, 9 John. (N. Y.) 507;
Patterson v. Commonwealth, 74 Ky. 311;
Shaw, etc., Co. v. City of Bedford, 19 Fed. 753;
Ager v. Murray, 105 U. S. 126;
Carver v. Peck, 131 Mass. 291;
U. S. Rev. Stat. §5046;
Campbell v. Haverhill, 155 U. S. 610.

(No. 7.)

Stock of a domestic manufacturing company which is largely or wholly invested in letters patent of the United States is taxable under the laws of the state of Indiana.

Secs. 5051, 5060, 5071 Burns R. S. 1901;
People v. Campbell, 138 N. Y. 543;
People v. Wemple, 61 Hun. (N. Y.) 53, 58, 65;
Crown Cork & Seal Co. v. Md., 87 Md. 687;
Storage Battery Co. v. Board, 60 N. J. L. 66;
Marsden Co. v. Assessors, 61 N. J. L. 641;
Bank of Commerce v. Tenn., 161 U. S. 134;
Van Allen v. Assessors, 70 U. S. 573;
National Bank v. Commonwealth, 76 U. S. 353;
Patterson v. Kentucky, 97 U. S. 501;
R. R. Co. v. Peniston, 85 U. S. 5;
Central Pacific R. R. Co. v. California, 162 U. S. 91;
Western Union Telegraph Co. v. Mass., 125 U. S. 530;

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Western Union Telegraph Co. v. Taggart, 163 U. S. 1;
Society for Savings v. Coite, 6 Wall. 594;
Prov. Inst. v. Mass., 6 Wall. 611;
Home. Ins. Co. v. New York, 134 U. S. 594;
Plummer v. Coler, 178 U. S. 115;
Murdock v. Ward, 178 U. S. 139;
Sherman v. U. S., 178 U. S. 150;
Orr v. Gilman, 183 U. S. 278.

ARGUMENT.

THE COMPLAINANT HAS A PLAIN, ADEQUATE, LEGAL REMEDY UNDER THE LAWS OF THE STATE OF INDIANA AND IS NOT ENTITLED TO THE INTERPOSITION OF A COURT OF EQUITY.

Complainant was not entitled to relief in a court of equity in this cause for the reason that there was a plain and adequate remedy at law. That remedy complainant did not pursue. What was the remedy pointed out by the statute of Indiana?

Sec. 1, Art. 10, of the Indiana constitution, reads as follows:

> "The general assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only, for municipal, educational, literary, scientific, religious, or charitable purposes as may be especially exempted by law."

Sec. 48 of the tax law of 1891, being §8458 R. S., 1894 and 1901, reads as follows:

> "On the first day of April of each year, or as soon thereafter as practicable, and before the first day of June, the assessor shall call upon each person required by this act to be assessed, and furnish him or her with the proper blanks for the purpose, and thereupon such person shall make to such assessor a full and correct description of all the personal property, of which such person was the owner on the first day of April of the current year, and such person shall also, at the same time, make separate, full and true statements in like manner, in writing, distinctly setting forth in each a correct description of all the personal property held, possessed or controlled by him as executor, administrator, guardian, trustee, receiver, partner, agent, attorney, president or accounting officer of a corporation, consignee, pawnbroker, or in any representative or fiduciary capacity, and he shall fix what he deems the true cash value thereof to each item of property for the guidance of such assessor, or shall determine and settle the value of each item, after examination of such statement, and also an examination under oath of the party or any other person, if he deems it necessary. In determining and settling such valuation, he shall be governed by what is the true cash value, such being the market or usual selling price at the place where the property shall be at the time of its liability to assessment, and if there is no market value, then the actual value. In making the valuation, annuities and royalties shall be valued at their present cash

value. For the purpose of making such statements, the person to be assessed shall receive the proper blanks from the assessor."

The above section provides for the listing of personal property generally throughout the state.

Sec. 53 of the Indiana tax law of 1891, being §8463, R. S. 1894 and 1901, contains a form of schedule for such property.

All domestic corporations are assessed in Indiana pursuant to statute specifically governing the same. All of the hundreds of corporations in Indiana, including appellant, are assessed under the same statutes by similar boards.

Sec. 12 of the Indiana tax law, being §8422, R. S. 1894 and 1901, governing the assessments of domestic corporations, reads as follows:

"All corporate property, including capital stock and franchises, except where some other provision is made by law, shall be assessed to the corporation as to a natural person in the name of the corporation. The place where its principal office in this state is situated shall be deemed its residence, but if there be no principal office in the state, then such property shall be listed and taxed at any place in the state where the corporation transacts business."

Sec. 25 of the tax law, being §8435, R. S. 1894 and 1901, provides for the taxation of franchises, and is as follows:

"Every franchise granted by any law of this state, owned or used by any person or corporation, and

every franchise or privilege used or enjoyed by any person or corporation, shall be listed and assessed as personal property."

Sec. 73 of the tax law of 1891, being §8491, R. S. 1894 and 1901, provides how all domestic corporations are required to make return of their property for taxation. This applies to all domestic corporations in Indiana, and reads as follows:

"Every street railroad, water works, gas, manufacturing, mining, gravel road, plank road, savings bank, insurance and other associations incorporated under the laws of this state (other than railroad companies and those heretofore specifically designated), shall, by its president or other proper accounting officer, between the first day of April and the first day of June of the current year, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

"1st. The name and location of the company or association.

"2nd. The amount of capital stock authorized and the number of shares in which such capital stock is divided.

"3rd. The amount of capital stock paid up.

"4th. The market value, or if no market value, then the actual value of the shares of stock.

"5th. The total amount of indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

"6th. The value of all tangible property.

"7th. The difference in value between all tangible property and the capital stock.

"8th. The name and value of each franchise or privilege owned or enjoyed by such corporation.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of state. In case of the failure or refusal to make report, such corporation shall forfeit and pay $100.00 for each additional day such report is delayed beyond the first day of June, to be sued and recovered in any proper form of action in the name of the state of Indiana, on the relation of the prosecuting attorney, such penalty, when collected, to be paid into the county treasury. And such prosecuting attorney in every case of conviction shall be allowed a docket fee of $10.00, to be taxed as costs in such action."

It was upon this statute, and pursuant to its forms, that the appellant made its return for the years 1893, 1894, 1895, 1896, 1897, 1898, and 1900. (Record, p. 3.) When these sworn statements of corporations are made, as is shown in this record, they are handed to the county auditor and by him turned over to the county board of review. This board of review thereupon takes these lists and makes the original assessment against all domestic corporations in Indiana.

The law governing these assessments by the county board of review is set forth in §74 of the tax law of 1891, being §8492, R. S. 1894 and 1901, as follows:

"Such statement shall be scheduled by the assessor, and such schedule, with the statement so scheduled, shall be returned by the assessor to the county auditor. The auditor shall annually, on the meeting of the county board of review, lay before said board the schedule and statements herein required to be returned to him, and said board shall value and assess the capital stock and all franchises and privileges of such companies or associations in the manner provided in this act, and the said auditor shall compute and extend the taxes for all purposes on the respective amounts so assessed, the same as may be levied on other property in such towns, cities or other localities in which such companies or associations are located. In all cases where the capital stock of any such corporation exceeds in value that of the tangible property listed for taxation, then such capital stock shall be subject to taxation upon such excess of value; where no tangible property is returned or found, and the capital stock has a value, it shall be assessed for its true cash value. But where the capital stock, or any part thereof, is invested in tangible property, returned for taxation, such capital stock shall not be assessed to the extent that is so invested. Every franchise or privilege of any such corporation shall likewise be assessed at its true cash value. Where the full value of any franchise is represented by the capital stock listed for taxation then such franchise shall not itself be taxed; but in all cases where the franchise is of greater value than the capital stock, then the franchise shall be assessed at its full cash value, and the capital stock in such case shall not be assessed."

The court will observe that this board of review values all capital stock, all franchises and privileges of all domestic corporations in Indiana. The court will further observe that the above section fully defines exactly how domestic corporations shall be assessed in Indiana. We will discuss this section further along in the brief. Our purpose now is to simply show the method by which taxes are assessed and the remedies for illegal or void assessments.

Sec. 114 of the tax law of 1891, being §8532, R. S. 1894 and 1901, provides for the organization, duties and powers of the county board of review. It met annually on the first Monday after the fourth day of July, until amended by an act of 1895, which fixes the time at the third Monday in June. Two weeks previous notice of its meeting is given by the county auditor.

After the county board of review has made such original assessments against a domestic corporation, if such corporation feel aggrieved, it is its duty to appeal to the state board of tax commissioners. This appeal is provided for by statute.

Sec. 125 of the tax law of 1891, being §8543, R. S. 1894, reads as follows:

> "Appeals shall lie from the decision of any county board of review to the state board of tax commissioners, which shall herein determine the same in such manner as it may by its rules prescribe, and certify its decision, which shall be final, to the proper county auditor: Provided, That all such appeals shall be allowed within such time and under such restrictions as may be prescribed by the

state board of tax commissioners; but the pendency of such appeals shall not operate to stay the collection of any tax, except by special order of the board and upon such conditions as it may prescribe."

This section was amended in 1895 (Acts 1895, p. 79, §8543, R. S. 1901), so that the amended section was in force when the assessment for 1895, 1896, 1897, 1898, and 1900 was made against the appellant. The amended section reads as follows:

"Any person, partnership, company, association or corporation dissatisfied with the action of the county board of review, upon any original assessment or upon any application to increase or decrease the assessment made by any township or county assessor, or upon any order for the assessment of hidden or omitted property, shall have the right to appeal from the order or assessment of the county board of review to the state board of tax commissioners; and in like manner any township or county assessor, or any member of the county board of review, or any taxpayer or taxpayers, of the county, shall have the right to appeal to the state board of tax commissioners from any original assessment, made by said county board of review, and from any order of the county board of review increasing or decreasing any assessment or refusing to increase the same, or to assess hidden or omitted property, upon giving notice of such appeal within five days after the adjournment of the county board of review, to the county auditor of the county from which said appeal is to be taken. Upon receiving notice of

such appeal, the auditor of such county shall forthwith make out a statement, in writing, showing concisely the substance of the complaint made, if any, and the action of the board thereon, and shall transmit the same by mail to the auditor of state, who shall lay the same, for its action, before the state board of tax commissioners when it shall convene: Provided, That such state board of tax commissioners may make such regulations in regard to the taking of appeals, not inconsistent herewith, as they may deem necessary to protect the rights of the parties questioning their assessments. Such state board of tax commissioners shall, upon appeal from an assessment by the party aggrieved, assess the property in controversy. The auditor of state shall certify to the auditors of the several counties, all such changes made by said state board of tax commissioners, showing in the first column the assessment made by the county or township officials, and in the second column the assessment as made by the said state board of tax commissioners, which latter amounts shall be by said auditor extended on the tax duplicates in lieu of the amounts fixed by said township or county officials, or by said county board of review: Provided, further, That it shall not be necessary for said auditor of state to issue separate notices of certificates with reference to each person affected, but he may include all persons affected in any one county in one or more notices and certificates: Provided, further, That the pendency of such appeals shall not operate to stay the collection of any tax, except by special order of the board, and upon such conditions as it may prescribe."

The sections of the Indiana tax law above quoted constituted a complete remedy by appeal. Nowhere in the bill is there anything shown that complainant every attempted to have the assessments changed from the amount as fixed by the board of review for the years 1893, 1894, 1895, and 1896, nor from the assessment as fixed by the state board of tax commissioners for the years 1897, 1898, and 1900. It is not only the privilege of any person feeling aggrieved at the assessment of any county board of review in Indiana to appeal to the state board of tax commissioners; but it is a condition precedent to his right to recover that he must appeal.

The taxpayer can not sue for the recovery of money, nor can he enjoin the collection of taxes until he has pursued the statutory remedy provided for such cases.

This question is conclusively stated in the case of Senour v. Matchett, 140 Ind. 636. In this case the county board of review had added to the appellee's tax list $10,000.00 against "greenbacks" held by Matchett on the first day of April. "Greenbacks," at that time, 1892, were not taxable. Matchett did not appeal from the assessment of the county board of review to the state board of tax commissioners, as he should have done. Matchett averred that he had no notice that the board of review was attempting to increase his assessment, and he had no remedy at law; that the state board of tax commissioners had not made any rules or regulations governing appeals from the county board of review; and, as a matter of fact, that he did not own any "greenbacks" on the first day of April, 1892, the

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date of the assessment. He thereupon attempted to enjoin the treasurer of Marshall county from collecting these taxes. The supreme court of Indiana, after quoting the law governing appeals and, although the assessment of "greenbacks" was utterly void, on page 639 say:

> "Notwithstanding this fact, no steps were taken by him to prosecute an appeal to the state board of tax commissioners, but he abided his time until his taxes became due, and then refused to pay those accruing upon the amount added to his list by the board of review, and commenced this action for injunctive relief."

Further along, on the subject of collateral attack against the assessment made by the county board of review, on page 639, the court say:

> "While it is true that the board had no right, under the law then existing, to add legal tender notes held in a *bona fide* manner by appellee, still it was within its province to determine whether he had temporarily converted his taxable money into these notes for the express purpose of abating the payment of taxes thereon; and if it made the mistake, or reached a wrong conclusion, it can not be held, upon a collateral attack, that its action or decision therein was void, and if he was guilty of such a conversion a court of equity will not interfere. Ogden, Treas., v. Walker, 59 Ind. 460. In this tribunal, which possesses *quasi* judicial powers, is lodged, by law, exclusive original jurisdiction over the subject matter of revising and correct-

ing tax assessments. And when it once obtains jurisdiction over the person by virtue of notice provided by the statute, or upon appearance of the taxpayer, whose list is called in question, its action or decision in the matter, right or wrong, is binding upon him until set aside or vacated by an appeal or some other direct authorized proceeding. See Jones, Treas., v. Cullen, 40 N. E. 124, and cases cited therein; in Jones, Treas., v. Rushville Natural Gas Co., 135 Ind. 595."

Then, taking up the direct question here presented, viz., the right to enjoin the treasurer from collecting taxes on erroneous assessments, the court say on page 640:

> "The legislature have created a board of review in each county, and likewise a state board of tax commissioners, and clothed each with certain appropriate powers and duties, and provided for an appeal from the former to the latter, a person aggrieved by reason of the errors or irregularities that may enter into the decisions or orders of the board of review, and which may render the same voidable, but not void, must invoke the remedy provided by appeal, and will not be permitted to assail the same in a court of equity. In this there is no hardship, for it must be presumed that the appel lant tribunal, as is enjoined upon it by law, will give the appealing party a fair hearing and administer equal justice to all; neither permitting property liable to taxation to escape the burden thereof, nor impose upon the citizen an obligation to pay a tax upon property or means that he does not own, or which, if he does, are exempt from taxation by

> virtue of law. The contention of appellee that he could not appeal for the reason that the state board of tax commissioners had not made and provided the necessary rules and regulations relative to appeals to that body, is without merit. The law granted him an appeal as a matter of right; he failed to exercise it in any way, and the neglect of the state board to provide regulations and furnish blanks is not an available excuse for his failure to demand an appeal."

This case, it seems to us, is conclusive against the right of appellee to injunctive relief.

> "Construction by the state courts of last resort, of state constitutions and statutes will ordinarily be accepted by this court as controlling."
>
> Adams Express Co. v. Ohio, 165 U. S. 219.

The proposition laid down in the Matchett case, supra, in principle is entirely supported by this court in the Pittsburgh Railway case, 172 U. S. 32. There the appellant, as here, failed to appeal from the decision of the board of public works to the circuit court; but instead thereof hastened to the federal court and prayed for an injunction. The court below justly denied the right, and this court affirmed the decision, using this language on page 48:

> "The plaintiff, upon its own showing, having made no attempt to avail itself of the adequate remedies provided by the statute of the state for

> the review of the assessment complained of, is not entitled to maintain this bill."

The same doctrine is supported by the following case: Small, Receiver, v. City of Lawrenceburg, 128 Ind. 231. On page 234 this language appears:

> "The assessor was charged with the duty of fixing the value on the property. Secs. 3071, 3072, R. S. 1881. And if the parties were aggrieved on account of being assessed with a greater amount than should have been charged against them, they had a remedy by appearing before the city board of equalization."
>
> Clement v. People, 177 Ill. 144.

The law of appeals from assessments in Illinois is similar to that of Indiana. The supreme court of Illinois, on page 144, say:

> "The charge of injustice and lack of uniformity with other assessments in the county need not be further noticed than to say §86 of the revenue law affords a party so aggrieved the only remedy for the correction of an injustice or exclusive valuation of its property for the purposes of taxation, unless it is shown to have been fraudulently made. We have repeatedly held that the courts have no power to revise an assessment of a tax merely because of a difference of opinion as to the reasonableness of the valuation placed upon the property."
>
> Kinley Manufacturing Co. v. Kochersperger, 174 Ill. 379.

Discussing this duty of appeal to the court from the decision of the county board, the supreme court of Illinois, refusing an injunction because the company had not pursued the remedy provided by statute, say on page 381:

> "It is the duty of the county board to determine every case brought before it. * * * It is a familiar rule that where there is a complete remedy at law, equity will not interfere."

It was the duty, then, of appellant to have applied to the state board of tax commissioners from the action of the county board of review.

All officers are presumed to do their duty. The state board of tax commissioners, it must be presumed, would have done its duty under the law and under the oaths of its members. If there had been an excessive assessment, the state board of tax commissioners would have reduced it. If there had been an illegal assessment, it must be presumed that the state board of tax commissioners would have corrected such errors.

The state board of tax commissioners is composed of the governor, who is chairman; the secretary of state, the auditor of state, and two persons appointed by the governor of different political parties. The two appointees are called commissioners. These five constitute the board. They convene on the second Monday of July of each year at Indianapolis, and assess railway property, rolling stock, telegraph, palace car, dining car, etc., companies, and hear appeals from county boards of review. The evidence is all submitted and the hearing is entirely *de novo*.

The appellee, not having appealed, the presumption is that the assessment made by the county board of review is correct. The presumption runs all the way through this case.

Senour, Treas., v. Matchett, supra.

In Jones, Treas., v. Gas Co., 135 Ind. 595, in reversing the trial court because it granted an injunction against the treasurer, restraining him from collecting the taxes fixed by the county board of review on the gas company, the supreme court of Indiana, on page 598, use this language:

> "The board of equalization not only has the power to assess the capital stock of a corporation where the value of such stock exceeds the value of the tangible property, but it is its duty to do so. The board in such cases has exclusive original jurisdiction, and, while its action is not strictly judicial, it is at least *quasi* judicial and binds every one within its jurisdiction."

The court then proceeds to a discussion of the assessment of capital stock above the value of tangible property as returned by the company; and as that point was pressed by the appellant herein, we quote the further language of the Indiana supreme court from page 598, supra:

> "It is true that such board can not legally assess capital stock where the capital is invested in tangible property listed for taxation, unless such stock exceeds in value the property in which it is invested, but who shall determine the question as to whether the stock is of greater value than the

tangible property? The board of equalization, we think, must decide that question. If it makes a mistake and reaches a wrong conclusion, can it be said that its assessment is void? We think not. We think it is binding on the corporation assessed, until set aside or vacated by appeal, or some other authorized direct proceeding. It has always been the policy of the state to make the assessment and collection of taxes summary, and to hold now that a mere mistake or error of judgment in the officers charged with the duty of assessing and collecting taxes renders the tax void and subjects the officers to injunction proceedings, is to reverse this long settled policy."

Having thus, we trust, shown that the sole remedy of appellee was appeal, let us proceed to the next step.

Having appealed, the presumption is that the state board of tax commissioners would have done its duty and corrected its errors and remitted all void assessments, if any there were. This is a presumption of law that necessarily arises.

REFUNDING OF TAXES.

IF THE STATE BOARD SHOULD AFFIRM THE ASSESSMENT MADE BY THE COUNTY BOARD, THE APPELLEE SHOULD HAVE PAID THE TAXES ASSESSED AND THEN FILED A PETITION WITH THE BOARD OF COMMISSIONERS FOR RECOVERY OF THE AMOUNT ILLEGALLY ASSESSED.

STATE AND COUNTY TAXES.

THE TAXES HERE ENJOINED ARE THE STATE, COUNTY AND CITY TAXES.

The statute of Indiana provides for the refunding of these taxes, all of them. Sec. 1 of the tax law of 1853, being §5813, R. S. 1881, §7915, R. S. 1894 and 1901, covers the refunding of all county taxes wrongfully assessed and collected and makes it the duty of the board of county commissioners to repay the same. Sec. 2 of said act, being §5814, R. S. 1881, §7916, R. S. 1894 and 1901, provides for the refunding of taxes paid into the state treasury, and provides that the auditor of state shall audit and the treasurer of state shall pay the same out of the state treasury. Said sections read as follows:

> "Section 1. In all cases where any person or persons or body politic or corporate shall appear before the board of commissioners of any county in this state, and establish, by proper proof, that such person or body politic or corporate has paid any amount of taxes which were wrongfully assessed against such person or body politic or corporate in such county, it shall be the duty of said board to order the amount, so proved to have been paid, to be refunded to said payer from the county treasury,

so far as the same was assessed and paid for county taxes.

"Sec. 2. In all cases where a portion of the amount so wrongfully assessed and paid shall have been for state purposes, and shall have been paid into the state treasury, it shall be the duty of the said board of commissioners to certify to the auditor of state the amount so proven to have been wrongfully paid, under the seal of said board of commissioners; and the auditor of state shall, thereupon, audit the same as a claim against the treasury, and the treasurer of state shall pay the same out of any moneys not otherwise appropriated."

If the county treasurer has already paid into the state treasury the appropriation of money due the state, then the act of March 9, 1889, being §§1419-1425, R. S. 1894 and 1901, affords an adequate remedy to the taxpayer. So much of the first section of this statute as is in point, reads as follows:

"Any person or persons having or claiming to have a money demand against the state of Indiana, arising at law or in equity, express or implied, accruing within fifteen years from the time of the commencement of the action, may bring suit against the state therefor, in the superior court of Marion county, Indiana, by filing a complaint with the clerk of the said court, and procuring a summons to be issued by said clerk, which summons shall be served upon the Attorney-General of Indiana, thirty days before the return day of the summons."

REFUNDING CITY TAXES.

The latter part of §59 of the act of March 7, 1873, being §3618, R. S. 1894 and 1901, provides for the refunding of taxes erroneously assessed and collected by cities. So much of said section as is applicable to this case reads as follows:

> "The common council shall then proceed to fix the amount and rate of tax to be levied on property and polls within such city, and the clerk shall have power, at any time, to correct erroneous assessments that shall be proven and made apparent to him, and the common council may, at any time, order the amount erroneously assessed against and collected from any taxpayer to be refunded to him."

In Board v. Armstrong, 91 Ind. 528, at page 535, the court said:

> "Sec. 5813, R. S. 1881 (being §7915, R. S. 1884 and 1901), to which reference has been made, changes the rule recognized by the authorities, cited as above, on the subject of refunding taxes, and requires taxes, however voluntarily paid, to be refunded upon proof that such taxes were *wrongfully* assessed."

The bill correctly states that Koehne, treasurer of Marion county, is by law also the treasurer of the city of Indianapolis; and he collects all the taxes due the state from the county of Marion; thus he is the treasurer for the

state of Indiana, the county of Marion, and the city of Indianapolis in collecting all taxes and distributing them. He is thus the trustee and agent of all three of the taxing governments in the collection of taxes. He collects every dollar of taxes assessed for all purposes against the appellant. We have shown above that there is an ample statutory remedy for collecting taxes already paid over to state, county and city. The methods above set forth for the collection of taxes, either illegally or fraudulently assessed, are methods that are provided for by statute as construed by the supreme and appellate courts of Indiana. In other words, they are statutory remedies.

But, independent of all statutes and their constructions, the common law affords ample remedy for the collection of taxes illegally or fraudulently assessed. This question has been fully passed upon, both by the supreme and the appellate courts of Indiana.

Board v. Armstrong, 91 Ind. 528;
Simonson v. Town, 5 Ind. App. 466;
Dillon on Municipal Cor., 940.

There is no city treasurer of the city of Indianapolis. All of the money for the city of Indianapolis always remains in the hands of the county treasurer of Marion county until it is expended. The office of city treasurer for the city of Indianapolis was long ago abolished, so that the county treasurer retains all of the money in his hands belonging both to the county of Marion and the city of Indianapolis until it is expended.

There is, however, a much shorter and more direct method than to wait until the money has been paid over by the county treasurer to the state, and that method is the one that appellee should have adopted, provided it had first appealed to the state board and such board had not corrected its assessment. Appellant was bound to use diligence and adopt the shortest and most convenient method of having refunded the taxes alleged to be illegally collected. This remedy was to file a petition with the board of county commissioners for the refunding of all illegal and void taxes paid to the county treasurer for the county and state and city governments. This was a duty, and if appellant neglected to perform it then it was guilty of laches, and can not now complain. The remedies, therefore, for the correction of the assessment, if the assessment was erroneous, is clearly pointed out, and if the property was wrongfully assessed, the statutes above quoted give a plain, adequate and simple remedy to determine these amounts and recover the same.

THE BILL DOES NOT SHOW THAT APPELLANT IS ENTITLED TO RELIEF IN A COURT OF EQUITY.

What does the bill show? It shows that appellant, The Indiana Manufacturing Company, was organized under the Indiana law governing the incorporation of manufacturing and mining companies; that at the time of the assessment for 1893, it had a capital stock of $360,000 (see record, page 2); that at that time it possessed four letters patent of the United States of the value of $25,000 (record, page 4); it was possessed of tangible property and assets to the

amount of $8,900.00. The bill does not show the value of the $360,000 stock, nor is it claimed that the stock was not worth $36,000 (the amount of that year's assessment) over and above the $25,000, the value of the letters patent.

(b) In 1894, the bill states that the company "was possessed of tangible property and assets to the amount of $7,645;" that it was "possessed of four letters patent of the United States of the value of $25,000." The value of the $360,000 of stock is not given, nor is it claimed that the market, or actual, value of the stock over and above the $25,000, the value of letters patent, was not more than the amount of the assessment for that year.

(c) In 1895, the bill does not show the value of the letters patent nor the number; nor the value of the capital stock. The stock was assessed at $36,000.

(d) In 1896 (record, page 8), as shown by the bill, complainant refused to give the information required by the statute governing the taxation of such corporations, and evaded all questions which would throw any light on the value of the capital stock. The county board of review raised the assessment to $180,000 (record, page 9), yet there is no allegation that the stock was not of that value over and above the value of the letters patent owned by it, which presumptively remained the same as before—$25,000. No appeal is shown to have been taken from the assessment, nor were any steps taken whatever to have the amount changed in any manner.

(e) In 1897 (record, page 10), return was made on the assessment lists for $6,544.00, which was fixed by the

board of review at $6,435.00. Here, as in the previous year, no information was furnished from which the value of the capital stock could be ascertained. An appeal was taken to the state board of tax commissioners, and the assessment was raised to $500,000. It is not shown in the bill that complainant ever appeared before the state board, or made any attempt to furnish it any information upon which they might pass their decision, and it is not alleged that the capital stock was not worth $500,000 over and above the value of the letters patent.

(f) In 1898 (record, page 11), the bill shows that the same course was pursued by the complainant that was pursued in 1897, and the state board fixed the assessment for these years at $500,000 and $360,000 respectively.

For the taxes of 1900 (record, page 18), the bill alleges that the appellant returned for taxation all its personal property at $3,503; that the county board of review then acting under an injunction from the United States circuit court for the district of Indiana, did not disturb this amount, but referred it to the tax assessor; that, thereupon, a taxpayer appealed to the state board of tax commissioners, and an assessment upon appellant's property was fixed at $360,000.

The bill does not allege that the appellant appeared before the state tax board, or offered any objection to the assessment, or furnished any evidence whatever of the value of its property; nor is there any suggestion anywhere in the bill that either for this year or for any of the preceding years, there was any overvaluation of the cap-

ital stock, and property of said appellant; nor is there any suggestion that the capital stock of said appellant was not worth as much as it was assessed for, at any of the years.

Appellant did not, for any of the years covered in the bill, appeal to the state board of tax commissioners. For some of the years other taxpayers intervened and appeaied, but appellant did not appeal for any year; but each time appellant immediately proceeded to the United States circuit court for the district of Indiana and sought, by injunctive methods, to prevent any assessment whatever upon any of its property other than the naked tangible property of the company.

The bill shows a continual and persistent course of evasion on the part of complainant, and an utter disregard of the tax laws of the state and an attempt to fix its own assessment and to say upon what and how much property it should be taxed. This conduct, of itself, should be sufficient to deprive the complainant of any standing in a court of equity.

We need not, however, rely upon the conduct of the complainant to sustain the court's ruling, although we deem such conduct alone sufficient to sustain the ruling dismissing the bill for want of equity. The bill is insufficient in other particulars to entitle complainant to the relief sought. It is established by the decided cases of this court that a bill of equity will not lie to restrain the collection of taxes, unless there exists some special circumstance bringing the case under some recognized head of equity jurisdiction. In other words, before taxes will be enjoined, the bill must show:

(a) That the collection of the taxes assessed would produce irreparable injury;

(b) That the collection of the taxes would lead to a multiplicity of suits;

(c) Or, that the tax would cast a cloud upon the complainant's title to real estate. Unless the bill states facts bringing the case under one of these recognized heads, no cause for equitable interference is shown, and the decree of the court sustaining the demurrer and dismissing the bill was right.

In Dows v. City of Chicago, 11 Wall. 108, in a suit to restrain the collection of taxes levied by the city of Chicago, Mr. Justice Field, speaking for the court, said:

> "Assuming the tax to be illegal and void, we do not think any ground is presented by the bill justifying the interposition of a court of equity to enjoin its collection. The illegality of the tax and the threatened sale of the shares for its payment constitute of themselves alone no ground for such interposition. There must be some special circumstances attending a threatened injury of this kind, distinguishing it from a common trespass, and bringing the case under some recognized head of equity jurisdiction before the preventive remedy of injunction can be invoked. It is upon taxation that the several states chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers, upon whom

> the duty is devolved of collecting the taxes, may derange the operations of government and thereby cause serious detriment to the public. No court of equity will, therefore, allow its injunction to issue to restrain their action except where it may be necessary to protect the rights of the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits, or produce the irreparable injury, or where the property is real estate, throw a cloud upon the title of the complainant, before the aid of a court of equity can be invoked."

The reason why the federal court will not stay the hand of state officers in the collection of taxes and the grounds upon which a court of equity will grant relief are so admirably stated in the above case by the learned justice that but little is left to say, and the case is one which is cited authoritatively in all later decisions of this court on the subject.

In Hannewinkle v. Georgetown, 15 Wall. 547, a suit to enjoin the selling of real estate for a tax, in affirming a decree dismissing the bill, Justice Hunt restated the rule as laid down in the Dows case.

Five years after the decision of the Dows case this court, in the State Railroad Tax Cases, 92 U. S. 575, again reconsidered all of the cases upon this subject, to that date. The evils flowing from the ready issuance of injunctions by the federal courts, restraining state officers from collecting taxes, were pointed out in an opinion rendered by Justice Miller, on page 613:

"We propose to consider these questions for a moment, because the immense weight of taxation rendered necessary by the debts of the United States, of the several states, and of the counties, cities, and towns, has resulted very naturally in a resort to every possible expedient to evade its force. It has been repeatedly decided that neither the mere illegality of the tax complained of, nor its injustice nor irregularity, of themselves, give the right to an injunction in a court of equity. (Citing authorities.) The government of the United States has provided, both in the customs and in the internal revenue, a complete system of corrective justice in regard to all taxes imposed by the general government, which, in both branches, is founded upon the idea of appeals within the executive departments. If the party aggrieved does not obtain satisfaction in this mode, there are provisions for recovering the tax after it has been paid, by a suit against the collecting officer. But there is no place in this system for an application to a court of justice until after the money is paid. That there might be no misunderstanding of the universality of this principle, it was expressly enacted, in 1867, that 'No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.' (Rev. Stat. §3224.) And though this was intended to apply alone to taxes levied by the United States, it shows the sense of congress of the evils to be feared if courts of justice could, *in any case*, interfere with the process of collecting the taxes on which the government depends for its continued existence. It is a wise policy. It is founded in the simple philosophy derived from the expe-

> rience of ages, that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment; and to do this successfully other instrumentalities and other modes of procedure are necessary, than those which belong to courts of justice."

In Milwaukee v. Koefler, 116 U. S. 219, in reversing a decree of the circuit court for the Eastern district of Wisconsin, setting aside the assessment of a tax and enjoining the city and its officers from collecting it, this court, by Justice Miller, reaffirmed the principles enunciated in the Dows case, quoting therefrom the quotation given above.

In Shelton v. Platt, 139 U. S. 591, this court, in reversing the case of the United States Express Co. v. Allen, 39 Fed. 712, enjoining the collection of the tax, Mr. Justice Fuller, on page 594, says:

> "The question whether, even if the act under which the tax in question was imposed, were unconstitutional, and the tax void, complainant on behalf of the express company was entitled to the relief accorded, meets us on the threshold. It was ruled in Dows v. Chicago, 11 Wall. 108, 112, that a suit in equity will not lie to restrain the collection of a tax on the sole ground that the tax is illegal, but that there must exist, in addition, special circumstances bringing the case under some recognized head of equity jurisdiction, such as that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or, where the property is real estate, throw a cloud upon the title of the complainant."

In Pacific Express Co. v. Seibert, 142 U. S. 339, Mr. Justice Lamar, in affirming the decree of the circuit court for the Western district of Missouri (Pacific Express Co. v. Seibert, 44 Fed. 310), dismissing the bill for want of equity, on page 348, said:

> "The primary and fundamental ground on which the maintenance of such a suit rests is the unlawfulness of the tax against which relief is sought, or, in other words, the invalidity or unconstitutionality of the legislative act under the authority of which the tax is imposed. It is true that this ground is not in itself sufficient. But when the illegality of the tax, or the invalidity or unconstitutionality of the legislative act under which it is imposed is established, it becomes necessary to go further, and make out a case that can be brought under some recognized head of equity jurisdiction: such as that the collection of the tax sought to be restrained may entail a multiplicity of suits; or cause some other irreparable injury, as, for instance, the ruin of complainant's business; or, where the property is real estate, throw a cloud upon the title of the complainant."

In Pittsburg, etc., Ry. v. Board of Public Works, 172 U. S. 32, this proposition was thoroughly discussed. On page 37 the court, by Mr. Justice Gray, lays down the fundamental proposition above stated, as follows:

> "The collection of taxes assessed under the authority of a state is not to be restrained by writ of injunction from a court of the United States, un-

> less it clearly appears, not only that the tax is illegal, but that the owner of the property taxed has no adequate remedy by the ordinary processes of the law, and that there are special circumstances bringing the case under some recognized head of equity jurisdiction."

With these principles thus reiterated by this court in view, do the facts stated in appellant's bill show that it is entitled to injunctive relief?

NO REAL ESTATE INVOLVED.

First. The bill does not show that any real estate is involved in this controversy, or that complainant had any real estate; therefore, the tax or the collection thereof would not throw a cloud upon its title, and we need not further consider this question.

> Dows v. Chicago, 11 Wall. 108;
> Milwaukee v. Koefler, 116 U. S. 219;
> Shelton v. Platt, 139 U. S. 591, 596;
> Cooley on Taxation, 543.

NO MULTIPLICITY OF SUITS.

Second. The bill alleges (record, page 15) that "were it possible to recover such moneys after payment, a multiplicity of suits would be necessary." The bill does not show how a multiplicity of suits would be necessary. As was said by Judge Caldwell: "It is real and not imaginary suits; it is probable, and not possible danger, of a

multiplicity of suits that will warrant an assumption of jurisdiction on that ground."

> Pacific Express Co. v. Seibert, 44 Fed. 310, 315.

Under the law of Indiana but one suit would be necessary to recover back all moneys, if wrongfully assessed. This question was fully and conclusively decided by the appellate court of Indiana, in the case of DuBois v. Board, 10 Ind. App. 347. In that case DuBois claimed to have paid a considerable sum on account of taxes erroneously assessed and collected. Part of it was due the state, part the county, and part the town of Crown Point. He filed a claim before the board of county commissioners, and on its being refused he immediately brought suit in the circuit court of the county. It was the duty of the board of county commissioners to refund the money, and the court so held. This is a settled law in Indiana, but before the trial court had passed upon the question the county treasurer had paid the money over to the state and town treasurers. The appellate court held that this did not in the least affect the taxpayer's right of recovery; that the county treasurer had notice of the claim, and should have retained the money. On page 350 the court, passing upon this precise question, said:

> "When the county, notwithstanding the legal proceedings instituted to recover such money, nevertheless, distributed the same to the state and town authorities, it did so at its own risk and peril,

and the appellant can not be required to pursue such funds into the hands of the parties to whom they were wrongfully distributed."

Further along, on page 350, the court holds that the county treasurer was a trustee for the taxpayer; that moneys paid in became county taxes until distributed. The language of the court in that case so fully covers the point and the facts in this case that we quote it:

"The assessment and collection of the taxes, as found by the court, had been made *in solido*, and not in parcels. When it was paid into the county treasury it became county taxes for all purposes until it had been distributed to the various funds. As long as it remained in the county treasury it was held in trust by the county, either for the appellant or for the proper funds to which it respectively belonged. When the board of commissioners received notice of the appellant's claim, the county became a trustee for the appellant, and in the event it was afterward adjudged that his claim was a meritorious one, it became obligatory upon the county to refund the money to appellant, which had been erroneously paid by him. The town of Crown Point collected no taxes from the appellant. It was the county or its representatives, who did this, and the county alone must respond as long as the funds are in its treasury. When this action was instituted, the money was all in the possession of the appellee, and it is impossible for us to conceive how the appellee could be held to profit by its own wrong in subsequently paying out or distributing the money or any part thereof, to the state or

town. The pendency of a suit is always sufficient notice of the matter involved in such suit, at least to the parties to the litigation, and those who claim under them. Arnold v. Smith, 80 Ind. 417. If this be true, there was certainly no necessity for suing out an injunction in order to hold the appellee accountable. It is true that the statute provides that when a portion of the taxes wrongfully assessed and paid shall have been paid for state purposes the commissioners shall give the claimant a certificate to the auditor of state for the repayment of the same by the treasurer of state. But this provision is expressly limited to cases where the money had already been paid into the state treasury at the time the action was commenced. (R. S. 1894, §7916; R. S. 1881, §5814.) The section cited has no application when the money is still in the county treasury at the time of the action to recover the same."

Various provisions of the statutes of Indiana, not necessary to quote, make up the following data, which is of importance in this case. The county board of review meets on the third Monday of June, annually (§8532, R. S. 1894). The state board of tax commissioners meets on the second Monday of July, annually (§8447, R. S. 1894). The levies are fixed and the tax duplicate made up and on January first are turned over by the county auditor to the county treasurer for the collection of taxes (§8556, R. S. 1894). The first instalment immediately thereafter becomes due. It, however, need not be paid, nor does it become delinquent until the

first Monday in May following, and the second instalment is not due until the first Monday of November following (§8570 R. S. 1894.) The taxpayer has all this period in which to pay his taxes, and if any portion is illegal or wrongful and void he has all this time in which to bring suit in the state court to recover it back.

The appellant could have paid its taxes any time between January 1st and May 1st, and filed a claim before the board of county commissioners for refunder of his taxes, and from their action an appeal is given to the circuit court, and then to the state appellate or supreme court, according to the facts. This is not only an adequate remedy, but it is a short, speedy, simple, summary and cheap remedy (Rev. Stat. 1894, §7917).

Shultz v. Board, 20 Ind. 178;
State v. Board, 63 Ind. 497.

IRREPARABLE INJURY.

Third. Does the bill show that the complainant would suffer irreparable injury?

What is the irreparable injury complained of as charged in the bill? The bill charges that "Armin C. Koehne, as treasurer as aforesaid, are, in compliance with the supposed duty devolving upon them under the unconstitutional, invalid and void statutes of the state of Indiana, requiring such taxation, demanding the further large sum, to wit: [The sum of $389.85, as unpaid taxes for the said year 1893" (Rec., p. 5); "$481.40, as unpaid taxes for the

said year 1894" (Rec., p. 6); "$495.04, as unpaid taxes for the year 1895" (Rec., p. 8); "the sum of $3,556.96, as unpaid taxes for the said year 1896" (Rec., p. 9); "the sum of $8,538.67, as unpaid taxes for the said year 1897" (Rec., p. 11); "the sum of $8,954.65, as unpaid taxes for the year 1898" (Rec., p. 13)], basing said demand upon the valuation of letters patent of the United States, owned or held by your orator, as above set forth, *or upon the capital stock of your orator*, which consists entirely of, or solely represents, the letters patent of the United States, as above set forth; and are threatening to levy upon and seize and sell the property of your orator to pay the taxes of your orator, so wrongfully, unlawfully and unjustly demanded; all in violation of the constitution and laws of the United States under and by virtue of which such letters patent were issued, and are held by your orator, and in defiance of your orator's right in the premises, and to the great and manifest wrong and injury of your orator." * * * "That it is a part of the duty of the said defendant, Armin C. Koehne, as aforesaid, to pay over into the treasury of the state of Indiana a large proportion of the amount so received and collected by him as taxes, and, therefore, that if said amounts are so collected and received and paid over, they will become mixed with other moneys of the state and thus be beyond the reach of this or any court, and irrecoverable, and that great and irreparable injury will result to your orator, if such unlawful collection and paying over as aforesaid be not prevented." (Rec., pp. 14, 15.) "That said defendants, in their official ca-

pacity, are threatening and intend to and will in supposed compliance with the requirements of the provisions of the aforesaid unconstitutional, invalid and void statutes of the state of Indiana, requiring such taxation, levy upon the property of your orator and will proceed to sell and distrain the same to pay and satisfy said sums so claimed to be due and delinquent, if not enjoined from so doing; and that said defendants are threatening to collect such wrongful, unjust, illegal and void taxation by distraint and sale of the property of your orator, to the great and irreparable injury of your orator." (Rec., p. 15.) "That, notwithstanding the payments aforesaid of all the taxes justly and equitably due * * * Armin C. Koehne, as treasurer of Marion county, Indiana, as aforesaid, is claiming and asserting the right to enforce the payment of the entire taxes as extended upon the duplicates, * * * and will unless restrained and enjoined by a decree of this court, attempt to enforce payment of such wrongful, unjust and unlawful taxes, by distraint and sale of the property of your orator, to its great and irreparable wrong and injury." (Rec., p. 15.)

These are the charges in the bill, upon which complainant bases its right for redress in a court of equity.

Summarized, the bill charges the unconstitutionality of the statute, the illegality of the taxes, that defendants are demanding payment of more than $20,000, are threatening to levy upon, seize and sell complainant's property, that if collected and paid over to the state it can not recover, that they are threatening to and will if not enjoined levy

upon and proceed to sell and distrain its property to pay the taxes demanded.

Clearly, this does not show that complainant will be irreparably injured. There is no charge that the acts are being done by irresponsible persons. No allegation of inability on the part of the company to pay the amount of taxes demanded. The trespass involved in the threatened levy and sale is not shown to be "continuous, destructive, inflictive of injury, or incapable of being measured in money." No claim is made that if the taxes are paid to the county treasurer suit can not be maintained against the county and recovery be had for the entire amount.

We have already shown that even though the complainant had waited until the funds were distributed, and the state's portion had been paid into the state treasury, suit might be brought against the state to recover the money (§§1419 to 1425, R. S. 1894 and 1901). But it was unnecessary for complainant to wait until the taxes had been distributed before bringing his action to recover, if wrongfully assessed. The taxes are fixed by the board of review in June, annually (§8532, R. S. 1894 and 1901). The state board of tax commissioners meets in July, annually (§8547, R. S. 1894 and 1901). The taxes become due in January, and may be paid at any time before the first Monday in May following (§8570, R. S. 1894 and 1901). If the property was wrongfully assessed, upon payment to the county treasurer, complainant could have immediately filed its claim with the board of county commissioners, to have the same refunded (§7915, R. S. 1894

and 1901). From the decision of the board an appeal would lie to the circuit court (§7917, R. S. 1894 and 1901). "When it was paid into the county treasury it became county taxes for all purposes, until distributed to the various funds" (DuBois v. Board, 10 Ind. App. 347, 350). So that the injury complained of, that if paid to the state it would be irrecoverable, is not real but fanciful, not probable, nor even possible.

In Dows v. Chicago, 11 Wall. 108, 112, which has been frequently cited with approval, it was said by Mr. Justice Fields, speaking for the court:

> "The party of whom an illegal tax is collected has ordinarily ample remedy, either by action against the officer making the collection or the body to whom the tax is paid. Here such remedy existed. If the tax was illegal, the plaintiff protesting against its enforcement might have had his action, after it was paid, against the officer or the city to recover back the money, or he might have prosecuted either for his damages. No irreparable injury would have followed to him from its collection. Nor would he have been compelled to resort to a multiplicity of suits to determine his rights."

In Shelton v. Platt, 139 U. S. 591, the averments as to irreparable injury were "That the property of the said United States Express Company in Tennessee, is employed in interstate commerce in the said express business, and necessary to the conduct of it; that if seized by the said sheriff it will greatly embarrass the company in the conduct of such business and subject it to heavy loss and

damage, and the public served by it to great loss and inconvenience." Mr. Chief Justice Fuller, speaking for this court, on page 596, said:

> "The trespass involved in the levy of the distress warrants was not shown to be continuous, destructive, inflictive of injury incapable of being measured in money, or committed by irresponsible persons. So far as appeared, complete compensation for the resulting injury could have been had by recovery of damages in an action at law. There is no allegation of inability on the part of the express company to pay the amount of the taxes claimed, nor any averments showing that the seizure and sale of the particular property which might be levied on, would subject it to loss, damage and inconvenience which would be in their nature irremedial. The bill showed the company to be doing a vast business, and it was an unreasonable inference that it must submit to the sale of its wagons and horses, or that such sale would work that kind of mischief which justifies the interference of equity in the application of a preventive remedy. Nor did the mere fact that its property might be used in the conduct of interstate commerce give jurisdiction."

In State Railroad Tax Cases, 92 U. S. 575, at page 614, this court said:

> "Mere errors or excess in valuation, or hardship or injustice of the law, or any grievance which can be remedied by a suit at law, either before or after payment of the taxes, will not justify a court of

> equity to interpose by injunction to stay the collection of a tax."

In Pittsburg, etc., Railway v. Board of Public Works, 172 U. S. 32, the authorities are reviewed and the same principles enunciated.

In Arkansas, etc., Association v. Madden, 175 U. S. 269, at page 274, Mr. Chief Justice Fuller, speaking for the court, said:

> "Inasmuch as the bill contains nothing to indicate inability on the one hand to pay the franchise tax in question, or on the other, to respond in judgment if it were found to have been illegally exacted, and sets up no special circumstances justifying the exercise of equity jurisdiction, other than the consequences which complainant can easily avert, without loss or injury, we are of opinion that it can not be sustained. It is quite possible that in cases of this sort the validity of a law may be more conveniently tested, by the party denying it, by a bill in equity, than by an action at law; but considerations of that character, while they may explain, do not justify, resort to that mode of proceeding."

In Brewer v. City of Springfield, 97 Mass. 152, 154, the court, by Bigelow, say:

> "Until the plaintiffs have been compelled to pay the tax which they allege to have been illegally assessed upon them, they have suffered no wrong; when they have paid it, they can collect it back by

an action at law, which would furnish them an adequate and complete remedy."

In Hunnewell v. City of Charlestown, 106 Mass. 350, 352, it is said:

> "It is no foundation for a resort to equity, that the plaintiff is put to the inconvenience of raising the money to pay the assessment, in order to have his legal remedy by recovering it back;"

In Van Coot v. Board, 18 Wis. 247, 249, that court said:

> "With this right of action against the corporation or body politic to which the money is paid, or for which it is collected, to recover it back, there would seem to be no more propriety in the interference of equity to stay the proceeding than in the most common case of trespass or wrong. There can be no pretense of irreparable injury. At most it is but a proceeding to take such sum of money, or such a definitely ascertainable value of property, for which, in the judgment of both law and of equity, the return of a like sum will be full compensation."

Judge Cooley, in his work on taxation, on page 538, entirely supports the above views in these words:

> "When a tax, as assessed, is only a personal charge against the party taxed, or against his personal property, it is difficult in most cases to suggest any ground of equitable jurisdiction. Pre-

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sumptively the remedy at law is adequate. If the tax is illegal and the party makes payment, he is entitled to recover back the amount. The case does not differ in this regard from any other case in which a party is compelled to pay an illegal demand; the illegality alone affords no ground for equitable interference, and the proceedings to enforce the tax by distress and sale can give none, as these only constitute an ordinary trespass. To this point the decisions are numerous. The exceptions to this rule, if any, must be of cases which are to be classed under the head of 'irreparable injury.'"

Fourth. The authorities cited by appellant in no wise conflict with the above authorities, as an examination of the cases will show:

Crescent City, etc., Company v. Butchers' Union, etc., Company, 12 Fed. 225, was a suit to enjoin the abrogation of complainant's contract or charter rights.

In Starin v. New York, 115 U. S. 248, the court held that no federal question was involved.

In Osborn v. Bank of United States, 9 Wheat. 737, the court held that the effect of the law of Ohio, in question, would be the expulsion of the bank from the state, and that the injury done thereby would be in its nature irreparable.

In Watson v. Sutherland, 5 Wall. 74, jurisdiction was sustained on the ground of irreparable injury.

In Boice v. Grundy, 3 Pet. 210, the basis of jurisdiction was fraud.

In Payne v. Hook, 7 Wall. 745, jurisdiction was based on diverse citizenship.

As was said in Payne v. Hook, on page 430:

> "The equity jurisdiction conferred on the Federal courts is the same that the High Court of Chancery in England possesses,"

and we have been unable to find a case in which the high court of chancery in England ever interfered to restrain the collection of taxes, customs or duties. See Moores v. Smedley, 6 Johns. Ch. (N. Y.) 28; Wells, Fargo & Co. v. Dayton, 11 Nev. 161, 167.

The government of the United States has provided a complete system of corrective justice in regard to all taxes imposed by the general government, which, in both the customs and internal revenue departments, is founded upon the idea of appeals within the executive departments.

If the party is aggrieved and does not obtain satisfaction on appeal, a suit may be brought against the collecting officer after payment is made. But until payment, he has no standing in any court. To emphasize this principle, and that there may be no misunderstanding of it, congress enacted that "No suit for the purpose of restraining the assessment of any tax shall be maintained in any court." (U. S. Rev. Stat. §3224.)

While this section of the statute seems broad enough to include taxes levied by the states, yet it is held to apply only to taxes levied by the United States, and not to state taxation; yet it does show that it is the policy of the gov-

ernment not to interfere with the collection of taxes, except in extreme cases, where it is clearly shown that the party is entitled to equitable relief.

In what cases relief will be granted is stated in the cases cited above.

In the tax cases where jurisdiction has been exercised in this class of cases, it will be found that they fall within some of the classes stated in the Dows case, supra, or else the question of jurisdiction was waived.

In Cumming v. National Bank, 101 U. S. 153, the jurisdiction was maintained on the ground of preventing multiplicity of suits.

In Allen v. Baltimore, etc., Railway Company, 114 U. S. 311, it was admitted that if the property was levied on and sold, great sacrifice and loss would result. This admission made a case of irreparable injury.

In Dodge v. Woolsey, 18 How. 331, it was to prevent the violation of the charter and a breach of trust.

In Union Pacific Railway Company v. Cheyenne, 113 U. S. 516, jurisdiction was maintained to prevent a multiplicity of suits.

So it is uniformly held, following the Dows case, that before jurisdiction will be maintained, the complainant must bring himself within the recognized jurisdiction of a court of equity, as recognized in this class of cases. The mere fact that a federal question may be involved, that the statute is unconstitutional, that the tax is illegal or that the property is wrongfully assessed, will not be sufficient to give jurisdiction in equity.

SUMMARY.

To sum up the above propositions:

(1) The appellant had a complete and adequate remedy at law, by appeal to the state board of tax commissioners from the assessment made by the county board of review.

(2) It failed and refused to pursue this remedy, which was open to it, and which it was its duty to pursue, and, having failed to do it, lost its right, in the state or federal courts, to assail the assessment made by the county board.

(3) The presumption is that the state board of tax commissioners would have remedied any evil and corrected any erroneous assessment, if such there was, had appellant appeared before the board and pointed out such evils.

(4) If the state board refused to make such correction the taxpayer could wait until after the first day of January following, then he could have paid the taxes to the county treasurer and immediately filed one claim with the board of county commissioners for the refunding of all of the illegal taxes assessed, for all purposes.

(5) This remedy was not only adequate and perfect, but was much more speedy and simple than to proceed as appellant has done in this case.

(6) The alleged illegal taxes could in no event cast a cloud upon the title to appellant's real estate, because no real estate is shown to have been owned by appellant, and no taxes thereon are involved in this controversy.

(7) No multiplicity of suits were necessary; on the contrary, one simple petition filed with the board of county commissioners would have covered the entire taxes charged to have been illegally assessed and collected, and if refused, appellant could have filed its complaint in the circuit or superior court of Marion county.

(8) No irreparable injury could possibly have resulted to appellant, if it had pursued the remedy that the statute distinctly points out. The assessment by the county board or the state board would have been made months before any taxes would be due from appellant, and, further, after such taxes were due, it had four months in which to pay the same, and prepare its petition for refunder for each of the years complained of.

(9) Appellant, having failed either to appeal or to pay its taxes and file a petition for refunder, as the statute of Indiana provides, the appeal was bad and the circuit court rightfully sustained the demurrer and dismissed the appeal.

THE BILL DOES NOT SHOW THAT THE VALUE OF THE LETTERS PATENT WAS INCLUDED IN THE ASSESSMENTS.

The allegations of the bill are, "That the state of Indiana has enacted and is attempting to enforce certain statutes, requiring the taxation of patent rights, or letters patent of the United States; the provisions of said statutes in question being comprised in the act of the general assembly of the state of Indiana, approved March 6, 1891, which, by section 5C, requires that * * * "Seventh.

All patent rights, describing them and giving the number of each patent and the value of each; and which, in section 53, has prescribed and enacted a form of schedule which all property owners are required to follow in returning their property for taxation, in and by which schedule the 'Number of patent rights and value' are required to be returned for taxation in common with other personal property." (Rec., p. 3.)

From this provision of the statute, requiring the number and value of patent rights to be given, complainant concludes that the board of review fixed the assessment for each year at the amount specified in the bill, because of the ownership of the letters patent and because of the value of the stock which it is alleged consisted in and was derived solely from such ownership of the letters patent.

The law, however, under which complainant was assessed, provides specifically what shall be assessed and what shall not, as well as the manner in which it shall be assessed.

We have already quoted many of the sections of the statute, showing the mode of assessment and the procedure, but we desire to again refer to a few of the sections, briefly, at this point.

The tax law of 1891 (Acts 1891, chapter 99, pp. 199 to 291), provides in itself a complete and comprehensive system of taxation. The law must be construed as a whole and not be construed from some one sentence in a section of the law.

Section 4 of the act of 1891, and the section as amended

in 1895 (Acts 1895, p. 21), provides that "Property exempt from taxation by the laws of the United States shall not be included" for the purpose of taxation (§8411, R. S. 1894 and 1901).

By section 25 of the tax law (being §8435, R. S. 1894 and 1901) "Every franchise granted by any law of this state, owned or used by any person or corporation, and every franchise or privilege used or enjoyed by any person or corporation, shall be listed and assessed as personal property."

Section 30 of the tax law (being §8440, R. S. 1894 and 1901) provides for a statement from manufacturers.

Section 48 of the tax law of 1891 (being §8458, R. S. 1894 and 1901) provides for the furnishing of blanks to each person liable to be assessed. On these blanks a correct description of all personal property with the "true cash value of each item of property for the guidance of such assessor" shall be made.

Sections 48, 49 and 53 of the tax law (being §§8459, 8460 and 8463, R. S. 1894 and 1901) provide certain statements and schedules for all persons, including corporations; and section 73 of the tax law (being §8491, R. S. 1894 and 1901), for statements of domestic corporations.

These statements and schedules made by domestic corporations are returned to the county auditor, and by the auditor they are laid before the board of review at their annual meeting, "and said board shall value and assess the capital stock and all franchises and privileges of such

companies or associations in the manner provided by this act" (§74, Acts 1891; §8492, R. S. 1894 and 1901).

This act has been construed by the supreme court of Indiana in Pittsburg, etc., Railway Company v. Backus, 133 Ind. 625, and the purpose and effect of the statements and schedule is explained. On page 654 the court says:

> "These schedules are required to be filed for the purpose of giving a description of the property and as a source of information as to value, but, as expressly provided by the act, such values are not conclusive. The board may act on other information and the personal knowledge of values, and the act expressly provides that the assessment shall be made of this class of property at its true cash value, the same as all other property."

The statute states specifically how taxes shall be assessed on domestic corporations, and, while the act requires that the number and value of each patent right shall be given, this information is only for the purpose of informing the board of the various property held by the corporation, evidence, as it were, upon which the board ascertains the value of the taxable property.

What is it that goes to make up the value of the capital stock of this corporation? Not the letters patent alone, nor the tangible property, nor the money invested, but a combination of all these and other things. It is the plant, the franchise, the business capacity of the officers, the energy with which the business is conducted; the care, prudence and foresight of its managers, and the money

spent in conducting and advertising its business. The letters patent were of themselves of little value at the time of their issue. The efficiency of the patented articles, their capacity to perform the work contemplated, had to be proven and demonstrated; a demand and a market had to be created for them. A great deal of time and large sums of money had to be expended in placing these articles upon the market, and establishing their usefulness.

To illustrate this proposition: In the case of Holt v. Indiana Manufacturing Company, supra, being No. 30, October term, 1899, before this court, involving the same taxes of this company as are here involved for the years '92, '93, '94 and '95, evidence was taken and printed in the record. On page 30 of that record the secretary of appellant corporation testifies that its company expends between forty and fifty thousand dollars per annum for advertising expenses, for purchasing and delivering catalogues, traveling expenses in affecting royalty contracts, and introducing the stacker to the notice of the manufacturers and thrasher men; that its business extends to all the wheat growing sections of the United States.

The record in that cause further shows on page 2 of the stipulated statement of omitted testimony attached to the original record, and on page 11 of the record that the value of the letters patent was not taken into account in making the assessments for the years '92, '93, '94 and '95, but that the assessment placed upon the property of appellant corporation was the estimated value of the capital stock of such corporation exclusive of the letters patent.

We make these citations from the former record for the purpose of emphasizing our proposition at this point, that the bill in this case does not show that the value of the letters patent was included in making up the assessment against the appellant corporation.

These citations illustrate the point that patent rights alone are of little or no value; that they must be exploited and that corporations are organized for the purpose of manufacturing articles, the whole or parts of which are patented articles. The patent right itself is a very small part of the present value of the capital stock in many corporations, although the total amount of such capital stock originally may have been exchanged for letters patent. The Bell Telephone Company is a conspicuous example of the value of the capital stock of a corporation that has been created by the exploitation of patents. It can not be tolerated that because a part or the whole of the original capital stock of a corporation was exchanged for letters patent, therefore such capital stock for all the years of the life of the patents is to escape taxation. What is to happen when the original patents have expired? Is not the stock then to be taxed, or is the capital stock of such corporation never to be taxed because it was originally exchanged for letters patent. Or, suppose again, that a part of the capital stock was exchanged for letters patent and the balance was paid for in cash, must this stock that was originally traded for patents be branded on its face as non-taxable, and the balance of the capital stock be branded as taxable when issued?

There is scarcely a corporation of any great magnitude in the United States which has not at some time exchanged some of its capital stock for letters patent. For all that appears in the bill in this case this company has expended more money in advertising, manufacturing, distributing and exploiting the products of this company than the total assessment fixed on the capital stock thereof by the state board of tax commissioners.

By what sort of schedule is this court to determine what portion of the assessment so fixed is attributable to the original value of the patents, and what portion is attributable to the energy, intelligence and money used and expended in exploiting the article so patented?

In considering this subject the supreme court of Indiana, in the case of Hyland v. Central Iron & Steel Company, 129 Ind. 68, on page 70, the court say:

> "It can not be assumed that the tangible property necessarily represents the value of the capital stock, for the business of a corporation owning comparatively little tangible property, may be so profitable as to impress upon its stock a value much beyond its tangible property; or it may be the owner of a franchise which gives the stock a value much greater than that of the tangible property of which it is the owner. A corporation which, in its sworn return, values its capital stock at almost five times as much as its tangible property, can not successfully assert that the taxation of its tangible property entirely absolves its capital stock from liability. It is, at all events, entirely clear that where it affirmatively appears, as it does from the evidence

> in this case, that the tangible property is not equal to the value of the stock, the stock is taxable to the extent that it exceeds in value the tangible property."

As an answer to the proposition that only the tangible property must be assessed, the court, on p. 71, proceeds:

> "The only evidence as to the value of the capital stock, as well as the only evidence of the value of the tangible property, was that contained in the tax list, or schedule, and that certainly does not prove, or tend to prove, that there was double taxation since the actual value of the capital stock is shown to exceed that of the tangible property more than one hundred thousand dollars."

In Pittsburg, etc., Ry. Co. v. Backus, 154 U. S. 439, on page 445, Mr. Justice Brewer says:

> "The rule of property taxation is that the value of the property is the basis of taxation. It does not mean a tax upon the earnings which the property makes, nor the privilege of using the property, but rests solely upon the value. But the value of property results from the use to which it is put and varies with the profitableness of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results from such use. The amount and profitable character of such use determines the value, and if property is taxed at its actual cash value it is taxed upon something which is created by the uses to which it is put. In the nature of things it is practically impossible—

at least in respect to railroad property—to divide its value, and determine how much is caused by one use to which it is put, and how much by another."

In the State Railroad Tax Cases, 92 U. S. 515, on page 602, Mr. Justice Miller says:

"It is obvious, however, that while a fair assessment under these two descriptions of property will include all the visible or tangible property of the corporation, it may or may not include all its wealth. There may be other property of a class not visible or tangible which ought to respond to taxation, and which the state has a right to subject to taxation. Thus it may occur, as in fact is claimed by one of these companies, that, being insolvent and its earnings not being sufficient to pay anything beyond its necessary expenses for operating the road and its repairs, this tangible property represents more than the real wealth of the company and its property. While, on the other hand, another one of these companies is so rich that, after paying its expenses and interest on a large amount of debt, it declares large dividends; and this interest and these dividends, when looked to in reference to what is called the tangible property, show that there is here another element of wealth which ought to pay its share of the taxes.

"This element, the state of Illinois calls the value of the franchise and capital stock of the corporation,—the value of the right to use this tangible property in a special manner for the purposes of gain. This constitutes the third valuation, which is likewise to be made by the board of equalization."

In Adams Express Co. v. Ohio, 165 U. S. 194, on p. 224, this court approves the following language of the supreme court of Ohio. Mr. Chief Justice Fuller says:

> "If, by reason of the good will of the concern, or the skill, experience and energy with which this business is conducted, the market value of the capital stock is largely increased, whereby the value of the tangible property of the corporation, considered as an entire plant, acquires a greater market value than it otherwise would have had, it can not properly be said not to be its true value in money, within the meaning of the Constitution, because good will and other elements indirectly entered into its value. The market value of property is what it will bring when sold as such property is ordinarily sold in the community where it is situated; and the fact that it is its market value can not be questioned because attributed somewhat to good will, franchise and skillful management of the property, or any other legitimate agency."

When the Express Company Cases came up for rehearing, 166 U. S. 185, on p. 219, Mr. Justice Brewer, speaking for the court, said:

> "It matters not in what this intangible property consists—whether privileges, corporate franchise, contracts or obligations. It is enough that it is property which, though intangible, exists, which has value, produces income and passes current in the market of the world. To ignore this intangible property, or to hold that it is not subject to tax-

> ation at its accepted value is to eliminate from the reach of the taxing power a large portion of the wealth of the country. Now, whenever separate articles of tangible property, are joined together, not simply by unity or ownership, but in a unity of use, there is not infrequently developed a property intangible though it may be, which in value exceeds the aggregate of the value of the separate pieces of tangible property. Upon what theory of substantial right can it be adjudged that the value of this intangible property must be excluded from the tax lists, and the only property placed thereon be the separate pieces of tangible property? The first question to be considered, therefore, is whether there is belonging to these express companies intangible property—property differing from the tangible property—a property created by either the combined use or the manner of use of the separate articles of tangible property, or the grant or acquisition of franchise, or privileges, or altogether. To say that there can be no such intangible property; that it is something of no value, is to insult the common intelligence of every man."

On page 220 this court asserts the cardinal principle respecting the taxable value of property:

> "Now it is a cardinal rule, which should never be forgotten, that whatever property is worth for the purposes of income and sale, it is also worth for purposes of taxation."

We know of no single sentence in the books that contains a more comprehensive statement of the law of tax-

ation of corporate stocks, franchises and property, than is contained in the above sentence.

Taking all these things into consideration, as the boards making the assessment had the right to do; and taking into consideration the fact that it is not charged in the bill that the valuation placed upon the property was too high, can it be said that the boards did actually add the value of complainant's patents, if such patents are not taxable?

CONSTITUTIONAL QUESTION.

First. Are the letters patent of the United States taxable under state or municipal authority?

Second. Is the stock of a domestic manufacturing company, which is largely or wholly invested in letters patent of the United States, taxable under the Indiana tax law?

While we do not think the court will be called upon to decide either of the foregoing questions, yet we discuss them, as though they were vital questions.

It is contended by appellant, *first*, that under section 8, article 1, of the constitution of the United States that "The congress shall have power * * * to promote the progress of science and useful arts by securing, for limited times, to authors and inventors, exclusive rights to their respective writings and discoveries. * * * And to make all laws which shall be necessary for carrying into execution the foregoing powers." Letters patent issued by the United States, under the acts of congress, constitute a federal franchise that, by reason of the constitution, is not

subject to taxation under or by authority of the states; and, *second*, that stock in domestic corporations, which has been invested in letters patent of the United States, is not taxable by the states.

There is no case that we can find, decided by this court, in which this question has been presented, but it is asserted by appellant that the decisions which have heretofore been made are conclusive on the question presented here, and the attention of this court is especially called by appellant to—

McCulloch v. Maryland, 4 Wheat. 316;
Ableman v. Booth, 21 How. 506;
Osborn v. Bank, 9 Wheat. 738.
California v. Central Pacific Railroad Co., 127 U. S. 1;
Robbins v. Taxing District, 120 U. S. 489;
Patterson v. Kentucky, 97 U. S. 501;
Webber v. Virginia, 103 U. S. 344;
Philadelphia, etc., Co. v. Pennsylvania, 122 U. S. 326;
Leloup v. Mobile, 127 U. S. 640;
Crutcher v. Kentucky, 141 U. S. 47.

We shall not undertake to review each of the cases bearing upon this subject of taxation, but will state a few principles that appear to be well established.

Congress may constitutionally organize or constitute agencies for the carrying into effect of national powers granted by the constitution. To carry into effect the pow-

ers granted, banks may be organized, and such banks are not subject to taxation by the states.

McCulloch v. Maryland, 4 Wheat. 316;
Osborn v. Bank, 9 Wheat. 738.

In the regulation of commerce between the states, and in providing for postal accommodations and military exigencies, congress may grant franchises to railway corporations, and those franchises are not *eo nomine* taxable by the states.

California v. Pacific Railroad Co., 127 U. S. 1.

Congress has power "to borrow money on the credit of the United States," and to issue stock and bonds to evidence the debt created, and such stock or bonds are not taxable by the states.

Weston v. City of Charlestown, 2 Peters 449;
Bank of Commerce v. New York City, 2 Black 620;
Bank Tax Case, 2 Wall. 200;
The Banks v. The Mayor, 7 Wall. 16.

States may tax a franchise of a corporation, although its capital stock is invested in securities of the United States.

Society for Savings v. Coite, 6 Wall. 594;
Provident Institution v. Massachusetts, 6 Wall. 611;
Hamilton Co. v. Massachusetts, 6 Wall. 632;
Home Insurance Co. v. New York, 134 U. S. 594, 606.

States may impose a tax upon the privilege of taking, under the statute of wills or of descents, although part of the property of the decedent was composed of United States bonds.

Plummer v. Coler, 178 U. S. 115, 135;
Murdock v. Ward, 178 U. S. 139;
Sherman v. United States, 178 U. S. 150;
Orr v. Gilman, 183 U. S. 278, 289.

States may, under the act of congress, tax the shares of stock of a national bank to the shareholders, although the stock is wholly invested in government bonds.

Van Allen v. Assessors, 3 Wall. 573, 582;
People v. Commissioners, 4 Wall. 244, 255;
Lionberger v. Rouse, 9 Wall. 468, 473;
Palmer v. McMahon, 133 U. S. 660, 665.

A state can not exact a tax or license from a citizen of another state for the privilege or license of carrying on interstate or foreign commerce within its limits, nor impose a tax or duty upon the movements or operations between states that amounts to a regulation of commerce.

Moran v. New Orleans, 112 U. S. 69, 74;
Almy v. California, 24 How. 169;
Woodruff v. Parham, 8 Wall. 123, 138;
Crandall v. Nevada, 6 Wall. 35;
State Freight Tax Case, 15 Wall. 232, 281;
Railroad Co. v. Maryland, 21 Wall. 456, 472;
Welton v. Missouri, 91 U. S. 275;

Guy v. Baltimore, 100 U. S. 434;
Pickard v. Pullman's Southern Car Co., 117 U. S. 34, 43;
Robbins v. Shelby Taxing District, 120 U. S. 489, 497;
Leloup v. Mobile, 127 U. S. 640, 648;
Lyng v. Michigan, 135 U. S. 161, 166;
McCall v. California, 136 U. S. 104, 111;
Crutcher v. Kentucky, 141 U. S. 47, 61;
Brennan v. Titusville, 153 U. S. 289, 303.

Ships or vessels engaged in interstate or foreign commerce may be taxed by the state at their legal situs, their home port and the domicil of their owners.

Hays v. Pacific Mail Steamship Co., 17 How. 596, 600;
St. Louis v. Ferry Co., 11 Wall. 423;
Morgan v. Parham, 16 Wall. 471;
Wiggins Ferry Co. v. East St. Louis, 107 U. S. 365, 373;
Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 207.

States may tax personal property employed in interstate or foreign commerce, like other property within its jurisdiction.

Delaware Railroad Tax Case, 18 Wall. 206, 232;
Telegraph Co. v. Texas, 105 U. S. 460, 464;
Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 206;
Western Union Telegraph Co. v. Massachusetts, 125 U. S. 530, 549;

Marye v. Baltimore, etc., R. R. Co., 127 U. S. 117, 123;
Leloup v. Mobile, 127 U. S. 640, 649;
Pullman's Car Co. v. Pennsylvania, 141 U. S. 18;
State Railroad Tax Cases, 92 U. S. 575, 607;
Columbus Southern Ry. v. Wright, 151 U. S. 470;
Cleveland, etc., Ry. Co. v. Backus, 154 U. S. 439, 445;
Western Union Telegraph Co. v. Taggart, 163 U. S. 1, 14;
Adams Express Co. v. Ohio, 165 U. S. 194;
Pittsburg, etc. Ry. Co. v. Backus, 154 U. S. 421;
Postal Telegraph, etc., Co. v. Adams, 155 U. S. 688;
Henderson Bridge Co. v. Kentucky, 166 U. S. 150;
Adams Express Co. v. Ohio, 166 U. S. 185;
American Refrigerator Co. v. Hall, 174 U. S. 70, 75;
New York v. Roberts, 171 U. S. 658, 664;
Union Refrigerator Co. v. Lynch, 177 U. S. 149, 152.

From these cases, therefore, it would appear that—

(a) When congress creates a governmental agency, such agency can not be taxed by the states, as such tax operates directly upon the power of congress and detracts therefrom, which would be a limitation of the general government by the act of a state.

(b) Congress, having the power to borrow money upon the credit of the United States, and to issue stocks and bonds as evidence of such indebtedness, any tax by the states upon stocks and bonds, or directly upon the stock of a corporation invested in such bonds, is a limitation upon the power of congress.

(c) Congress, having the power to *regulate* interstate and foreign commerce, any tax by a state in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, is a burden upon that commerce and amounts to a regulation of it.

(d) Matters over which the states have control, as shares of bank stock owned by citizens, or having its *situs* within the state; or franchises of corporations granted by the state; inheritances and descents, are proper subjects of taxation by the states, although the stock of the corporation, or the estate may be invested in federal securities.

(e) The states have the power to tax the property and instrumentalities used in interstate commerce, having a *situs* within the state, so long as no discrimination is made against such property in favor of like property in the state.

In the creation of governmental agencies, and in borrowing money, the power of congress is absolute, and can not be interfered with. In matters of interstate commerce the power of congress is to *regulate*, and the states retain the power over the property engaged therein, which is within their borders, and control the same so long as such control does not amount to *regulation* of that commerce.

LETTERS PATENT.

Pursuant to the power of congress to "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right of their respective writings and discoveries," it was enacted that patents should be issued to inventors which should secure to them for a limited term the "exclusive right to make, use and vend the invention or discovery through the United States and the territories thereof." U. S. Rev. Stat. §4884.

What *right*, then, is secured to the inventor by letters patent by the constitutional provision?

This has been answered by this and other courts in various cases. In Patterson v. Kentucky, 97 U. S. 501, on p. 506, Mr. Justice Harlan says:

> "All which they primarily secure is the exclusive right in the discovery. That is, an incorporeal right, or, in the language of Lord Mansfield, in Miller v. Taylor (4 Burr, 2303): 'A property in notion,' having 'no corporeal tangible substance.'"

In Bloomer v. McQuewan, 14 How. 539, on p. 548, this court, by Chief Justice Taney, says:

> "The franchise which the patent grants consists altogether in the right to exclude every one from making, using or vending the thing patented, without permission of the patentee. This is all he obtains by the patent."

In re Brosnahan, 18 Fed. 62, on p. 64, Mr. Justice Miller says:

> "The sole object and purpose of the laws which constitute the patent and copyright system is to give to the author and the inventor a monopoly of what he has written or discovered, that no one else shall make or use or sell his writings or his invention without his permission; and what is granted to him is the exclusive right; not the abstract right, but the right in him to the exclusion of everybody else."

In Jordan v. Overseers, 4 Ohio 295, 309, the supreme court of Ohio said:

> "Although the inventor had at all times the right to enjoy the fruits of his own ingenuity in every lawful form of which its use was susceptible, yet before the enactment of the statute, he had not the power of preventing others from participating in that enjoyment to the same extent with himself; so that, however the world might derive benefit from his labors, no profit ensued to himself. The ingenious man was, therefore, led either to abandon pursuits of this nature, or to conceal his results from the world. The end of the statute was to encourage useful inventions and to hold forth as inducements to the inventor the exclusive use of his inventions for a limited period. The sole operation of the statute is to enable him to prevent others from using the products of his labors, except with his consent, but his own right of using it is not enlarged or affected."

See, also:

State v. Telephone Co., 36 Ohio St. 296, 311.

In Tod v. Wick, 36 Ohio St. 370, 384, the supreme court of Ohio said:

> "It (the act of congress) grants to the patentee and his assigns the exclusive right, for a fixed period, to make, use and vend to others his invention or discovery throughout the United States and territories thereof. U. S. Rev. Stat. §4884. This is the extent of the immunity or privilege which the act confers."

In Livingston v. Van Ingen, 9 John. (N. Y.) 507, 581, Chief Justice Kent said:

> "That power (of congress to grant patents) only secures for a limited time to authors and inventors the exclusive privilege to their writings and discoveries. * * * The national power will be fully satisfied if the property created by patent be for the given time enjoyed and used exclusively, *so far* as under the policy of the several states the property shall be deemed fit for toleration and use. There is no need of giving this power any broader construction in order to attain the end for which it was granted, which was to reward the beneficient efforts of genius, and to encourage the useful arts."

The court of appeals of Kentucky, in Patterson v. Commonwealth, 74 Kentucky 311, said:

> "The only benefit to be derived from the patent is that it excludes others from selling the same kind

> of oil for a limited period, unless authorized to do so by the patentee, with the additional right on the part of the latter to sell and transfer his patent right, in the mode prescribed by the patent laws."

From these expressions of the courts it appears that the only right conferred is the mere right to exclude others from interference, and give the inventor a monopoly on the invention, for a limited period, as a reward for his ingenuity. The matter, therefore, with which the states can not interfere is this exclusive right. The right granted is personal property. It passes, in case of bankruptcy, to the assignee. (U. S. Rev. Stat, §5046.) In case of the death of the owner of the patent, the property goes to the executor or administrator. (Shaw, etc., Co. v. City of New Bedford, 19 Fed. 753.) It may be subjected by bill in equity to the payment of a judgment debt of the patentee. (Ager v. Murray, 105 U. S. 126, 128; Carver v. Peck, 131 Mass. 291.)

What is it then about this species of property that, though belonging to a citizen of the state, and having its *situs* within the state, may be used by compulsory methods to pay its owner's debts, yet can not be taxed by the government that gives its owner protection?

It is unlike a franchise granted to a railroad to carry out the powers of congress, to provide for military exigencies, postal accommodations, or the regulation of commerce between the states. It is unlike stocks and bonds, given in evidence of money borrowed on the credit of the government, and no like reason exists as for their exemption from taxation.

In Campbell v. Haverhill, 155 U. S. 610, 618, this court, in speaking of letters patent, by Mr. Justice Brown, said:

> "We have repeatedly held that rights created by congress are subject to the police power, as well as the taxing and the licensing laws of the several states."

This would appear to indicate that appellant's contention is not well founded. True, it has been held in other cases in state courts that patents are not taxable. These cases are based upon the language of Chief Justice Marshall, in McCulloch v. Maryland, 4 Wheat. 316, speaking of the taxation of governmental agencies; but a patent is not a governmental agency, but an "incorporeal and intangible right."

In People v. Russell, 49 Mich. 617, cited by appellant, it was held that the patentee was subject to the licensing laws of the state. Judge Cooley, speaking for the court, said:

> "The ordinance in question does not assume to interfere with, or in any way to abridge the exclusive rights which the patentee may lay claim to under his patent."

The case of Cranson v. Smith, 37 Mich. 309, cited by appellant, was a suit on a note given for a patent right, and it was held that the purpose of the act was "to impose conditions on the transfer of patent rights, which do not apply to any other kinds of property, thereby interfering with the value and enjoyment of such right."

In Herdic v. Roesler, 109 N. Y. 127, the court of appeals had under consideration a statute similar to the one in Cranson v. Smith, *supra*, and at page 133 the court says:

> "The right of a discoverer to sell his invention is not derived from his patent. This right would exist although no patent laws had been enacted. What he obtains by his patent is the right to exclude others from selling or using his invention for the period specified, the right to sell or use, which would, except for the protection of the patent laws, be open to all the world. The statute of New York, now in question, in no way interferes with this exclusive right."

See, also,

Reeves v. Corning, 51 Fed. 774, 784.

This property, therefore, in letters patent is subject to such control by the states as does not interfere with the *exclusive* right granted, or discriminate against it, and may be taxed to the owner the same as other property is taxed.

The question in this case, however, is not whether letters patent are taxable, *eo nomine*, as it is not seriously argued that the patents were assessed. The question is, whether, under the tax law of Indiana, stock in domestic manufacturing companies, which has been invested in letters patent, is taxable.

IS THE STOCK OF A DOMESTIC MANUFACTURING COMPANY, WHICH IS LARGELY OR WHOLLY INVESTED IN LETTERS PATENT OF THE UNITED STATES, TAXABLE UNDER THE INDIANA TAX LAW?

This question is becoming one of great importance to the states on account of the enormous amounts claimed to be invested in such property. In the four Pennsylvania cases alone nearly $7,000,000 of stock was claimed as exempt, while the cases that have been before the courts of New York and New Jersey have added much larger amounts.

In this case, while there is nothing in the bill to show that the value of the patents was more than $25,000, yet it is claimed that the entire value of the stock, which was found to be $500,000 in 1898, is entirely exempt for the reason that the entire capital stock had been exchanged for patents. What is it, then, that makes up this difference ($475,000) between the value of the capital stock and the value of the patents? What is it that makes up the value of the capital stock? Not the mere tangible property. It is the combination of the money invested to successfully operate the business, the combination of skill, energy and experience, with which the business is conducted. These, and many other things peculiar to each concern, make up the value of the stock. These are the things that add great value to the patents.

Assuming, for the purpose of argument, that the patents are not taxable, *eo nomine*, yet that would not preclude the state from taxing the stock of a purely domestic manufacturing company. This is one of the conditions upon which it came into existence.

To illustrate: A, B and C are desirous of combining their energies and capital in the manufacture of stackers. Not desiring to be personally responsible for all the liabilities of such an undertaking, they ask the state to incorporate. The state says: "Yes, you may incorporate, under the manufacturing and mining companies' act, upon certain conditions. You must comply with section one of that act. (§5051, R. S. 1894 and 1901.) You must pay in the amount of stock fixed by your articles within eighteen months. (§5060, R. S. 1894 and 1901.) You must make reports annually, as provided by that act (§5071, R. S. 1894 and 1901.) You must comply with all the requirements of that act. In addition to this, you must deliver to the assessor each year the statements and schedule required by the tax law governing domestic corporations, and pay a tax, to be assessed as provided by the tax law. Are these terms satisfactory? Are the franchises, privileges and immunities I offer you of sufficient value to you that you will comply with my terms?"

A, B and C consider the terms and accept the proffered privileges and immunities. Will they be heard to say that they will not pay for the privileges and immunities thus granted? Certainly not. Having accepted the benefits, they must pay the consideration. These are the conditions under which the complainant came into existence, and they are refusing to pay for the privileges thus granted and are now asking this court to relieve them from so doing.

The payment of these taxes is correlative of the right to exist by and under protection furnished to this domestic corporation by the state. The manner and method of their

taxation is one exclusively within the authority of the power that created it, and gave it authority to exist except, and except only, in so far as those provisions are in hostility to the federal constitution.

It is true that the courts of Pennsylvania and New York have decided that capital stock invested in patent rights is not taxable by the state. But courts of equal dignity have decided to the contrary.

In People v. Campbell, 138 N. Y. 543, the court of appeals, in a learned opinion rendered by Earle, Judge, held that the value of patents held by a manufacturing company is to be included in the taxation of its capital stock. In that case, as in this, the company was a domestic corporation, with a capital of $1,500,000. It was assessed by the comptroller at $3,000,000. There, as here, the company did not complain that the value placed upon its capital stock was too high. It did contend that it ought not to be assessed upon securities that were purchased with patent rights. In that case the entire capital stock of the company was originally invested in patent rights. Corporations were formed in various cities to use these rights, in consideration for which the company received stocks in such corporations.

After the court had disposed of several questions, it took up the direct question here presented, namely: Shall the patents that have been sold by the company be assessed for taxation? On page 547, the court answers that question affirmatively and decisively:

> "A patent is an incorporeal right—a franchise, conferred by the sovereign power upon the pat-

> entee. It is personal to him, and until he is divested of the title thereto, like other personal rights, it attends his person and exists where he is, or where he puts it to use. We are, therefore, of opinion that the comptroller did not err in including in the capital of the relator to be estimated for taxation its patents, so far as they had not been disposed of."

See also,

> People v. Wemple, 61 Hun (N. Y.) 53, 58, 65.

The most elaborately argued case in the books, where this precise question is presented, is the case of Crown Cork and Seal Co. v. Maryland, 87 Md. 687. The court here discusses all the cases then reported, bearing upon the question. The stock of the company was assessed at its full value, no deductions being made for the value of patents, and the court, on page 695, say that the leading question in that case was whether, in the assessment of capital stock of the appellant company for the purposes of taxation, the appellant is entitled to have the assessment limited to the value of property other than the patents granted by the United States. That is the precise question which we present here. There, the taxes were levied without regard to the value of the United States patents. The tax commissioner assessed the value of the shares of stock, and certified the return. On page 697 the court meets the proposition here presented in these words:

> "It is insisted that they (the taxing officers) have erroneously valued and assessed the Patent Rights

> in question, and this is the chief grievance of the appellant. But why should not the shares of stock in the appellant corporation be valued and assessed and taxes paid thereon? The number of corporations incorporated under the laws of this state, engaged in business here, employing vast sums of money and possessed of extensive property rights, is almost unlimited, and yet most of them, in the proper and successful management of their business, have been compelled to purchase and use patent rights to enable them to compete successfully with other corporations engaged in similar business. They are, without exception, compelled to pay taxes on their shares of stock, levied and assessed in like manner with those in controversy here. It is a total misconception of the object sought to be maintained on this appeal, to assert that this is an effort to tax patent rights."

The court, then continuing its vigorous discussion of this question and of the right to tax patents *eo nomine*, say:

> "It is not, however, necessary to the determination of the rights involved in this controversy to decide any such question. It is a proposition about which there is no lingering doubt, that patent rights are personal property, and entitled to the same protection as any other property (Cammeyer v. Newton, 94 U. S. 225); and it will remain for future consideration whether a patent right may not of itself be a proper subject of taxation; but that, as just stated, is not a question necessary to be decided on this appeal."

Further along, on page 698, recurring to the original proposition, of the right to tax the shares of stock, notwithstanding some of the value thereof may be made up of patent rights or franchises, this language appears:

> "To say that the shares of stock of a corporation incorporated under the laws of this state can not be taxed because the corporation enjoys certain *franchises*, the very use of which enables it to successfully carry on its business, would be to strike down our entire system of taxation relating to corporations. And even if it be true that a patent right exists through the medium of a contract with the federal government, its only effect upon the value of the shares of stock of a corporation, which are unquestionably taxable, is to aid in the development of the business interests of such corporation, and largely multiply the chances of its successful management. So that it is not a question as to how the value of the shares of stock of such corporation have been enhanced, whether by the aid of patent rights or by the sale of the manufactured product obtained by the use of such patent rights, or by the superior business qualifications of the agents of the corporation, who manage and control its affairs. It matters not how numerous nor how valuable its patent rights might have been at the inception of the appellant's business enterprise, the shares of its stock would now be comparatively valueless had not other agencies, forceful and active, put life and energy into the undertaking."

What is the scope of the patents granted? What is their operation? What does the government grant or give? These questions are answered on page 699:

> "The supreme court of Ohio, speaking with respect to the meaning of the patent laws of the United States, and quoted with approval in Patterson v. Kentucky, 97 U. S. 506, says: 'The sole operation of the statute is to enable him to prevent others from using the products of his labors, except with his consent.' In the granting of patents the federal government has never sought to do more, and, in fact, has never exercised greater authority than to extend protection to the privilege, such as that granted by a patent for an invention, against the infringement of those who seek to invade it. * * * After careful examination we have failed to discover any satisfactory authority showing that the government has ever yet indicated any intention of limiting the power of the states in dealing with a subject of this kind, although involving patent rights. It is a proposition without support, to seek to maintain that patent rights are agencies or instrumentalities of the General Government, with which the states have no right in any manner to interfere."

On page 700 the court discusses the Pennsylvania case in this language:

> "The result of our investigation is that we have found but two cases directly bearing upon the subject of the taxation of patent rights, as such, which is not the specific question to be determined on this

> appeal. The case which supports the theory of exemption of patent rights from taxation is the case of Commonwealth v. Westinghouse Electric, etc., Co., 151 Pa. St. 265. The supreme court of Pennsylvania, having filed no opinion, adopted that of the lower court, from which we briefly quote, and which sufficiently marks the distinction between the Pennsylvania case and the one now under consideration. The former case maintains that 'The tax being upon the capital stock, it is a tax upon the company's property and assets.' This is not the law of Maryland, and such view is not the accepted doctrine held by the United States supreme court. (Bank of Commerce v. Tennessee, 161 U. S. 146.)"

The court then takes up the case of People v. Campbell, supra, decided by the New York court of appeals, as follows:

> "We have referred to the one case, that of 151 Pennsylvania State, *supra*, which maintains the non-liability to taxation of patent rights: the case of People v. Campbell, 138 N. Y. 543, maintains a doctrine directly contrary to the Pennsylvania case. The New York case was a proceeding by certiorari to review the action of the state comptroller in imposing a tax upon the relator, the Edison Electric Light Company, a domestic corporation, under the corporation tax act. The entire capital stock of the relator was originally invested in patent rights." (p. 701.)

The court then quotes at length, with approval, the opinion rendered by Earle, Judge.

We have thus quoted extensively from the Maryland case, because it contains an elaborate argument upon the entire question, more so than can be found in any other case, and it is a recent case. The Maryland case was appealed to this court, but dismissed by appellants. (See 20 Supreme Court Reporter, 1026.)

The supreme court of New Jersey, in the case of Storage Battery Co. v. Board, 60 N. J. L. 66, is in harmony with the Maryland case. In the New Jersey case, the company was organized with $10,000,000 capital, finally increased to $13,500,000. It had a cash value of but $2,500; the balance of its capital was traded for patents. Its entire capital stock of $10,000,000, less twenty-five shares, was traded to Gibbs & Payen for certain patents held by them. Afterwards, the $3,500,000 was issued and exchanged for other patents. The state board assessed a tax on the entire capitalization. In that case a small amount of capital was invested in the process of manufacture, and the court, after stating these facts, on page 69, used this conclusive language:

> "A small part of its capital is invested in the process of manufacture. Nearly all of its capital stock issued and outstanding was issued for the purchase of the patent rights, of which the company became the owner. These patents were granted by the United States, by Great Britain and Belgium, and the agreement with Payen, the inventor, comprehends all patents that might be issued to him for his invention throughout the world. Corporations of the class to which this company belongs are taxable

> with respect to the amount of capital stock issued and outstanding, as a fixed factor, without regard to the purpose for which the capital stock was issued, or whether issued for value or not."

In Marsden Co. v. Assessors, 61 N. J. L. 461, resistance to the tax was based upon the fact that all but $157,000 of its capital stock of $35,000,000 par value, was issued for purchase of rights under letters patent of the United States, and the claim was that such rights constitute property not taxable by the state. The court, in denying the contention, quoted with approval, from Honduras Co. v. Assessor, 25 Broom. 278:

> "The tax imposed is a franchise tax, exacted from the company as the price of the right and privilege which it received from the state of being a corporation. Although the amount to be paid is determined by the amount of the capital stock, and the duration of corporate life, yet these are only the *criteria* chosen by the legislature for ascertaining the probable value of the corporate franchise, which the company assumed. The tax is not levied upon the corporate property or business. Such a tax may be collected by the state granting the corporate franchise, no matter how the property of the company may be invested or employed, or where it may be situate."

The above cases, together with the cases cited by appellant in its brief, are all the cases we have been able to find from state courts of last resort that directly pass upon

the question here presented. There are other cases, however, where analogous questions have been presented and decided, which we believe to be controlling of the question here involved.

Before any property is exempt from taxation there must be a clear, well-defined provision of the constitution, or of some statute, or by necessary implication, that will protect it from taxation. We can find no clearer statement of this proposition than that of this court in the case of Bank of Commerce v. Tennessee, 161 U. S. 134, on page 146, Justice Peckham says:

> "These cases show the principle upon which is founded the rule that a claim for exemption from taxation must be clearly made out. Taxes being the sole means by which sovereignties can maintain their existence, any claim on the part of any one, to be exempt from the full payment of his share of taxes, on any portion of his property, must on that account be clearly defined and founded upon plain language. There must be no doubt or ambiguity in the language used, upon which the claim to the exemption is founded. It has been said that a well-founded doubt is fatal to the claim; no implication will be indulged in for the purpose of construing the language used, as giving the claim for exemption, where such claim is not founded upon the plain and clearly expressed intention of the taxing power."

The bonds and stocks of the United States are exempted by law from taxation, and yet when those bonds get into the hands of a bank or corporation, the value of the shares

of stock of such bank or corporation is taxed irrespective of the amount of United States securities held by such bank, and without regard to whether the whole or part of the capital of such bank or corporation is invested in national securities.

This question was originally decided in the case of Van Allen v. Assessors, 70 U. S. 573. Van Allen insisted that the shares of stock of the bank were not subject to taxation, because all of the capital stock was invested in United States bonds. On pages 581 and 582, this court, speaking through Mr. Justice Nelson, says:

> "The main and important question involved, and the one which has been argued at great length and with eminent ability, is whether the state possesses the power to authorize the taxation of shares of these national banks, in the hands of stockholders, whose capital is wholly invested in stocks and bonds of the United States? The court are of opinion that this power is possessed by the state, and that it is due to the several cases which have been so fully and satisfactorily argued before us at this term, as well as to the public interest involved, that the question should be finally disposed of. I shall proceed, therefore, to state, as briefly as practicable, the grounds and reasons that have led to their judgment in the case."

On page 583 the court answers the objection that a tax upon the stocks of the banks is a tax upon the bonds of the United States:

"The suggestion is that it is a tax by the state upon the bonds of the government, which constitute the capital of the bank, and which this court has heretofore decided to be illegal. But this suggestion is scarcely well founded; for were we to admit, for the sake of argument, this to be a tax of the bonds or capital stock of the bank, it is but a tax upon the new uses and new privileges conferred by the charter of the association; it is but a condition annexed to the enjoyment of this new use and new application of the bonds; * * * The tax on the shares is not a tax on the capital of the bank. The corporation is the legal owner of all the property of the bank, real and personal; and within the powers conferred upon it by the charter, and for the purposes for which it was created, can deal with the corporate property as absolutely as a private individual can deal with his own."

The right to tax the shares of a national bank at their fair cash value, irrespective of the securities of the United States government held by such bank, was reaffirmed by this court in the case of National Bank v. Commonwealth, 76 U. S. 353. In that case the entire capital stock was invested in securities of the government of the United States, and it was contended that they were not subject to taxation. On page 361 is discussed the practice of many corporations to pay the taxes charged against them for the benefit of the shareholders. In Indiana the statute requires the corporations generally to pay the taxes upon the shares of capital stock. This is for the convenience and is also for the assurance of the payment of the taxes where

the stockholders are scattered throughout the state and throughout the United States. On page 361 Justice Miller says:

> "It has been the practice of many of the states, for a long time, to require of its corporations thus to pay the tax levied on their shareholders."

This court asserts a doctrine which we have tried to emphasize, namely: That there must be some statute or some constitutional provision that prevents the states from assessing and collecting taxes upon the franchises of the government. The language used is as follows:

> "If the state can not require of the bank to pay the tax on the shares of its stock, it must be because the constitution of the United States, or some act of congress, forbids it. There is certainly no express provision of the constitution on the subject. But it is argued that the banks, being instrumentalities of the federal government, by which some of its important operations are conducted, can not be subjected to such state legislation. It is certainly true that the bank of the United States and its capital were held to be exempt from state taxation on the ground here stated, and this principle, laid down in the case of McCulloch v. The State of Maryland, has been repeatedly affirmed by the court."

On the next page (362) the court answers the argument that is made, whenever the states attempt to tax the franchises so called of the government, namely: That federal

government's instrumentalities are liable to be taxed to death and destroyed, saying:

> "The principle we are discussing has its limitation, a limitation growing out of the necessity on which the principle itself is founded. That limitation is that the agencies of the federal government are only exempted from state legislation so far as that legislation may interfere with or impair their efficiency in performing the functions by which they are designed to serve that government. Any other rule would convert a principle founded alone in the necessity of securing to the government of the United States the means of exercising its legitimate powers into an unauthorized and unjustifiable invasion of the rights of the states. * * * So of the banks. They are subject to the laws of the state, and are governed in their daily course of business far more by the laws of the state than of the nation. All their contracts are governed and construed by state laws. Their acquisition and transfer of property, their right to collect their debts, and their liability to be sued for debts, are all based on state law. It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional."

In the case of Patterson v. Kentucky, 97 U. S. 501, the appellant was fined in the state of Kentucky for violating certain Kentucky statutes, regulating the sale of oils, the formula of which was covered by a patent. Patterson insisted that his patent protected him from prosecution. On

page 503 that insistence is met by Justice Harlan in these words:

> "It is true that letters patent, pursuing the words of the statute, do, in terms, grant to the inventor, his heirs and assigns, the exclusive right to make, use and vend to others, his invention or discovery, throughout the United States and the Territories thereof. But, obviously, this right is not granted or secured without reference to the general powers which the several states of the union unquestionably possess over their purely domestic affairs, whether of internal commerce, or of police. * * * All which they primarily secure is the exclusive right in the discovery."

On page 507 the court continues the discussion of this question:

> "The end of the statute was to encourage useful inventions and to hold forth as inducements to the inventor the exclusive use of his inventions for a limited period. The sole operation of the statute is to enable him to prevent others from using the product of his labors, except with his consent. But his own right of using is not enlarged or affected."

Railroad franchises are also granted by the United States, but because of this fact, are all the states through which the land grant railroads, or railroads whose franchises are granted directly by the federal government, to forever escape taxation on that ground? Are the stocks and bonds of the railroad company never to be assessed because the railroad is operating under federal franchises?

That question was presented to this court in the case of Railroad Company v. Peniston, 85 U. S. 5. The doctrine is there again asserted that the state may exercise to an unlimited extent the right to take property except where limited by the federal law. Speaking for this court, Mr. Justice Strong, on page 29, says:

> "That the taxing power of a state is one of its attributes of sovereignty; that it exists independently of the constitution of the United States, and underived from that instrument; and that it may be exercised to an unlimited extent upon all property, trades, business and avocations, existing or carried on within the territorial boundaries of the state, except so far as it has been surrendered to the Federal government, either expressly or by necessary implication, are propositions that have often been asserted by this court. * * * The constitution contains no express restriction of this power, other than prohibition to lay any duty of tonnage or any impost or duty upon the imports or exports, except what may be absolutely necessary for the executing of the state's inspection laws. As was said in Lane County v. Oregon, 7 Wall. 77: 'In respect to property, business and persons within their respective limits, the power of taxation of the states remained, and remains, entire, notwithstanding the constitution.'"

It may be that a tax upon stock that had been exchanged for patent rights would remotely affect the value of such patent rights, but are the states to be prohibited from taxing such shares of stock because remotely the

value of some patent right is affected? This court, on page 30, *supra*, answers this question:

> "It can not be that a State tax, which remotely affects the efficient exercise of a Federal power, is for that reason alone inhibited by the Constitution. To hold that would be to deny to the States all power to tax persons or property. Every tax levied by a state withdraws from the reach of Federal taxation a portion of the property from which it is taken, and to that extent diminishes the subject upon which Federal taxes may be laid."

The United States government does not have any stock or interest in the Indiana Manufacturing Company. It granted to certain individuals a patent. Those individuals exchanged those patent rights for stock in the Indiana Manufacturing Company. Why should not that stock be assessed and taxed? This court, at page 32, supra, use this pertinent language:

> "Notwithstanding this, the railroad and the telegraph line are neither in whole nor in part the property of the government. The ownership is in the complainants, a private corporation, though existing for the performance of public duties. The government owns none of its stock."

How much less interest has the government in the Indiana Manufacturing Company than it had in the railroad of its own creation and largely constructed by it? The Union Pacific Railroad Company was a great national

highway, chartered and largely constructed by and for the United States government, and yet that did not prohibit the court from charging that company with the value of such franchise. It is contended because of this governmental privilege, given to an individual, that the government must therefore prohibit states from taxing that federal privilege for fear that if not the privileges, the dignity of the United States government will be affected. This court, on page 33, supra, discusses that question as follows:

> "It may, therefore, be considered as settled that no constitutional implications prohibit a state tax upon the property of an agent of the government, merely because it is the property of such an agent. A contrary doctrine would greatly embarrass the states in the collection of their necessary revenue, without any corresponding advantage to the United States. A very large proportion of the property within the states is employed in execution of the powers of the government. It belongs to governmental agents, and it is not only used, but it is necessary for their agencies. The United States mails, troops and munitions of war are carried upon almost every railroad. Telegraph lines are employed in the National service; so are steamboats, horses, stage coaches, foundries, shipyards and multitudes of manufacturing establishments. * * * Were they exempt from liability to contribute to the revenue of the states it is manifest the state governments would be paralyzed."

Discussing the McCulloch and Osborn cases, 9 Wheat. 738, this court explains those decisions. In the former of

those cases, the tax was held unconstitutional because laid upon the notes of a bank. In the latter case the tax was held unconstitutional because it was a tax upon the existence of the bank itself.

It is true that this court, in the case of California v. Railroad Company, 127 U. S. 1, held that franchises *eo nomine* of the government can not be taxed. This court, however, in that case on page 40, defined what a franchise is, as follows:

> "A franchise is a right, privilege or power of public concern, which ought not to be exercised by private individuals at their mere will and pleasure; but should be reserved for public control and administration, either by the government directly, or by public agents, acting under such conditions and regulations as the government may impose in the public interest and for the public security."

In Central Pacific Railroad Company v. California, 162 U. S. 91, this same franchise was under consideration. Mr. Chief Justice Fuller reviews the former decisions and, on page 125, says:

> "It may be regarded as firmly settled that although corporations may be the agents of the United States, their property is not the property of the United States, but the property of the agents, and that a state may tax the property of the agents subject to the limitations pointed out in Railroad Company v. Peniston."

Telegraph franchises are taxable, and the property of telegraph companies is likewise taxable. Telegraph fran-

chises and railroad franchises are of vastly more public concern and more direct instrumentalities of the government than a patent could ever possibly be. In fact, we deny that a patent is an instrumentality of the government at all. And yet, telegraph franchises are taxable. This court, in the case of Western Union Telegraph Company v. Massachusetts, 125 U. S. 530, elaborately discuss this whole question. On page 547, the proposition is stated and argued as follows:

> "The argument is very much pressed that it is a tax on the franchise of the company, which franchise being derived from the United States by virtue of the statute above recited, can not be taxed by the state. * * * By whatever name it may be called, as described in the laws of Massachusetts, it is essentially excise on the capital of the corporation. * * * The telegraph company derived its franchise to be a corporation, and to exercise the functions of telegraphing from the state of New York. It owes its existence, its capacity to contract, its right to sue and be sued, and to exercise the business of telegraphy, to the laws of the state under which it is organized."

The court held that notwithstanding the telegraph company derived its franchise or right to string its wires along the post roads of the United States, yet that did not withdraw from the states the power of taxing the stock of the company. This proposition is more fully discussed in the case of Western Union Telegraph Company v. Taggart, 163 U. S. 1, an Indiana case. The taxes were levied by

the state board of tax commissioners. The telegraph company contended that the Indiana taxing officers had included the franchises of the telegraph company as part of the property assessed for taxation; that because such franchise was derived from the federal government, therefore the stock of the company could not be taxed for the value of such franchises. On page 18, the court, by Mr. Justice Gray, after discussing the Indiana taxing statute, covered in a single sentence the whole proposition presented in this case:

> "Those decisions clearly establish that a statute of a state requiring a telegraph company to pay a tax on its property within the state, valued at such a proportion of the whole value of its capital stock as the length of its lines within the state bears to the length of all its lines everywhere, * * * is constitutional and valid notwithstanding that nothing is in terms directed to be deducted from the valuation, either for the value of its franchises from the United States, or for the value of its real estate and machinery situated and taxed in other states."

At page 28, the court continuing, say:

> "The bill * * * nowhere undertakes to fix the value of its franchises from the United States, the state of New York and foreign countries; and the tax commissioners by the authorities already cited, had the right and the duty in estimating the value of the plaintiff's property in Indiana, to take into consideration those franchises and the other elements mentioned in this paragraph of the bill."

In Society for Savings v. Coite, 6 Wall. 594, and Provident Institution v. Massachusetts, 6 Wall. 611, the provisions of the states of Connecticut and Massachusetts, respectively, for the taxation of savings banks were attacked on the ground that they resulted directly in a tax on government bonds; but the contention was denied.

In Home Insurance Company v. New York, 134 U. S. 594, it was held that the company or domestic corporation was not permitted to deduct from the value of its property for taxation purposes the amount of its assets invested in government bonds.

In Plummer v. Coler, 178 U. S. 115, Murdock v. Ward, 178 U. S. 139, and Sherman v. United States, 178 U. S. 150, it was held that an inheritance or legacy tax might be levied, although the estate consisted largely of nontaxable government bonds.

These decisions were approved and followed in Orr v. Gilman, 183 U. S. 278.

Whatever the tax in question may be called, it is essentially an excise based upon the capital stock, as authorized and required by the statutes of Indiana, the sole effort by the authorities and the law itself was to require appellant, a manufacturing company organized under the laws of the state of Indiana, to pay taxes upon the value of its property within and protected by the state, in return for the franchises, privileges, immunities and protection had from the state.

It has been suggested in appellant's brief that a patent is a contract, and that no state shall pass any law impairing

the obligation of contracts. It is sufficient to say that no law has been passed violating any contract rights of appellant. The laws in question were in force when appellant came into existence. It accepted the terms offered by the state, and should not be heard to complain. The only contract that has been violated is the contract between the appellant and the state, wherein it agreed to pay the taxes now demanded in return for franchises, privileges and protection.

We are making no assault upon federal franchises or privileges. We make no attack upon the exclusiveness of appellant's patents. We do not discriminate against them in any manner. We are simply trying to enforce a tax which it justly owes and is unjustly trying to evade. No rights of the federal government are being infringed upon or curtailed. None of its instrumentalities are assailed.

We respectfully submit that the errors assigned are unfounded. All the pleadings are before this court. We ask that the decree of the circuit court for the District of Indiana be in all things affirmed.

Respectfully submitted,

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